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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 34

**BROTHERHOOD OF RAILROAD TRAINMEN,
PETITIONER,**

vs.

VIRGINIA, EX REL. VIRGINIA STATE BAR.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS
OF THE COMMONWEALTH OF VIRGINIA**

**PETITION FOR CERTIORARI FILED NOVEMBER 9, 1962
CERTIORARI GRANTED FEBRUARY 12, 1963**

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**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS
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VOLUME II

INTRODUCTION OF PLAINTIFF'S EXHIBITS 32 THRU 66
WITH COMMENTS OF BOTH PARTIES

Mr. Bowles, Jr.: Your Honor, we have about forty minutes, and if we may resume the introduction of some of these documents—

[fol. 187] The Court: Yes, sir, the last exhibit filed was 31.

Mr. Bowles, III: That is correct. If Your Honor please, I would like to introduce as our next exhibit, a letter of January 18, 1937 from a man named A. E. Schwing to the Journal Department, and E. L. Harrigan, requesting that Mr. Bernard M. Savage be listed in all future publications as a regional counsel in Baltimore. This was heretofore filed as part of Exhibit 3 in response to the first call, and I would like this marked as Exhibit 32, if Your Honor please.

The Court: Plaintiff's Exhibit 32 identified and filed.

(Plaintiff's Exhibit No. 32, a letter, was marked and received in evidence.)

Mr. Bowles, III: I would like next to put in the letter of January 19, 1937 to Mr. Savage from E. L. Harrigan, appointing him as regional counsel. This was heretofore filed as part of Exhibit 3 in the first call, and it consists of 2 pages. This would be 33, Your Honor.

The Court: Plaintiff Exhibit 33 is identified and filed.

[fol. 188] (Plaintiff's Exhibit No. 33, a letter, was marked and received in evidence.)

Mr. Bowles, III: I would like next to file a letter of February 6, 1937 to Mr. Harrigan from Mr. Savage accepting the appointment, and it was heretofore part of Exhibit 3 in response to the first call. I would like that marked No. 34.

The Court: Plaintiff's Exhibit No. 34 is identified and filed.

(Plaintiff's Exhibit No. 34, a letter, was marked and received in evidence.)

The Court: Mr. Savage is a party to this proceeding, but not before the Court; is that correct?

Mr. Bowles, III: That is correct.

The Court: Equivalent to order of publication.

Mr. Bowles, III: That is correct.

Mr. Bowles, Jr.: That is correct.

Mr. Bowles, III: Now, for what it is worth, Your Honor, Exhibit 32 dated January 18, notifying the Journal Department to publish Savage's appointment as regional counsel quite a bit antedates the letter of February 6, in which Savage says he will do it. As our next exhibit, I would like [fol. 189] to introduce a copy of the rules and regulations signed by Mr. Savage and returned to E. L. Harrigan in the letter just introduced as Exhibit 34, accepting the appointment, and this was heretofore filed as part of Exhibit 3-B, and this consists of the original as well as a photostat attached to it. This was filed as 3-B in response to the second further call, and perhaps in the original, will mark 35 and the photostat mark 35-A.

The Court: Can't they go together?

Mr. Bowles, III: Or they can go together.

The Court: Plaintiff's Exhibit 35 is identified and filed.

(Plaintiff's Exhibit No. 35, a copy of Rules and Regulations, was marked and filed in evidence.)

Mr. Bowles, III: I would like to introduce next a letter of October 12, 1949 to B. M. Savage from W. P. Kennedy, terminating Savage as regional counsel, and this was heretofore filed in response to the first call, as Exhibit 3, and as Exhibit 5 in response to the request for further particulars. I would like that marked Exhibit 36, Your Honor.

The Court: Plaintiff Exhibit 36 identified and filed.

[fol. 190] (Plaintiff's Exhibit No. 36, a letter, was marked and received in evidence.)

Mr. Bowles, III: The next exhibit is a letter of October 12, 1949 to Savage from Kennedy reappointing him regional counsel with the same territory. This was heretofore filed as part of Exhibit 3 in response to the first call for production of documents, and as Exhibit 5 in response to the request for further particulars, and I would like that marked Exhibit 37, Your Honor.

The Court: Plaintiff Exhibit 37 is identified and filed.

(Plaintiff's Exhibit No. 37, a letter, was marked and received in evidence.)

Mr. Bowles, III: The following exhibits, Your Honor, Exhibit 38 through 66-D, which have to do with correspondence between the Brotherhood and some of its members, and the Brotherhood and Savage, will take quite sometime. These are the 134 letters that were referred to before. It will take quite sometime to mark these. Now I have taken the liberty of marking them beforehand with the hope of saving the Court some time.

The Court: Marking them, you mean?

[fol. 191] Mr. Bowles, III: I have written the exhibit number on each one, and I have grouped them as to the particular injured individual that they referred to, and they are in chronological order.

The Court: And running from what number to what number?

Mr. Bowles, III: From Exhibit 38 to Exhibit 66-D.

Mr. Bowles, Jr.: Your Honor, I might explain a little further about that. He has got in his book here the case, for example, the Bille Lee Arnold, consisting of four exhibits marked 38, 38-A, -B, and -C, and they are all 38.

Another case, Lewis M. Bailey is 39, -A, -B, -C.

The Court: I wonder if we can do away with all of those letters, and all of those papers together under one number?

Mr. Bowles, Jr.: I wouldn't think that they would be easy to reach unless we put them in those successive numbers. If Your Honor would do that, I think it would conform, make it much easier to get to the particular exhibit; otherwise, we would have to be thumbing through them, and the individual letter would not be identified. Now, he has marked it according to that scheme, all set and ready.

The Court: Very well, hand them to me, and we will [fol. 192] cooperate. Have you got anything to say?

Mr. Stallard: No, Your Honor, if you just mark them and put them in one big envelope, I think you could run them from one to whatever it is.

Mr. Bowles, Jr.: Well, in referring to them, we would like to be in a position to say, "If you would look at Exhibit 38-B," for example.

The Court: Let me have those, please.

Mr. Bowles, Jr.: Here, sir, you will see that is the system we have adopted that would make it plain.

The Court: Now, you have got these things—you have added to my difficulty by clipping 38-A, 38-B, 38-C, you have clipped them together. Why can't I put one tab on them?

Mr. Bowles, Jr.: As 38, I would say.

The Court: 38-A, -B, -C, -D, -E.

Mr. Bowles, Jr.: That is exactly so. One tab is 38, -A, -B, -C, and -D.

Mr. Stallard: That is all right.

Mr. Bowles, III: These photostats are photostats, that were produced by Mr. Stallard's client—

Mr. Stallard: Yes, we gave him those. We have copies.

Mr. Bowles, III: Now, if you would prefer during the [fol. 193] luncheon recess, I can take the ones that were, actually filed, which are clearer to read, and assemble them in the same order for you.

The Court: These are all right, to me.

Mr. Bowles, III: I have underlined some portions in there for my own use.

The Court: Do you object to the underlining?

Mr. Stallard: No.

Mr. Bowles, Jr.: Those are all copies, and we thought it was quicker.

The Court: Let me see, Miss Morton has put this Plaintiff Exhibit No. 38, -A, -B, -C, -D.

Mr. Bowles, Jr.: That is exactly what we had in mind.

The Court: There are five altogether, or ought to be. Mrs. Cessna, Plaintiff's Exhibit 38 and 38-A, -B, -C, are identified and filed.

(Plaintiff's Exhibit Nos. 38, 38-A, 38-B, 38-C, being letters, were marked and received in evidence.)

The Court: The next one will be Exhibit 39 and Exhibit 39-A, -B, and -C, and they are so identified, and filed.

[fol. 194] (Plaintiff's Exhibit Nos. 39, 39-A, 39-B, and 39-C, being letters, were marked and received in evidence.)

The Court: The next is 40, and 40-A, -B, and -C now identified and filed.

(Plaintiff's Exhibit Nos. 40, 40-A, 40-B, and 40-C, being letters, were marked and received in evidence.)

The Court: Now, Mr. Bowles, you can help us to this extent, if you come up here and help Miss Morton. Exhibit 41, 41-A, -B, -C, and -D, identified and filed.

(Plaintiff's Exhibit Nos. 41, 41-A, 41-B, 41-C, 41-D, being letters, were marked and received in evidence.)

The Court: Exhibit 42 and 42-A, -B, -C, and -D, are identified and filed.

(Plaintiff's Exhibit Nos. 42, 42-A, 42-B, 42-C, and 42-D, being letters, were marked and received in evidence.)

The Court: Plaintiff's Exhibits 43 and 43-A, -B, and -C, [fol. 195] identified and filed.

(Plaintiff's Exhibit Nos. 43, 43-A, 43-B, and 43-C, being letters, were marked and received in evidence.)

The Court: Plaintiff's Exhibit No. 44, and 44-A, -B, -C, and -D, identified and filed.

(Plaintiff's Exhibit Nos. 44, 44-A, 44-B, 44-C, and 44-D, being letters, were marked and received in evidence.)

The Court: Plaintiff's Exhibits 45, and 45-A, -B, and -C, identified and filed.

(Plaintiff's Exhibit Nos. 45, 45-A, 45-B, and 45-C, being letters, were marked and received in evidence.)

The Court: Would counsel like for me to excuse them now, and recess until 2:15, and I will continue and do this? I can finish this by lunch hour, and it will give you a little more time before the recess.

Mr. Bowles, Jr.: Well, if you finish before one, we can put in a few more exhibits, if you want to do that, sir.
[fol. 196] The Court: If I finish before one?

Mr. Bowles, III: I have got them assembled up through 74.

The Court: Well, you are coming back this afternoon?
Mr. Bowles, III: Oh, yes.

The Court: Well, let's do it then. You don't have to leave. I was just saying that I could do this without counsel. Exhibit 46, 46-A, -B, and -C, identified and filed.

(Plaintiff's Exhibit Nos. 46, 46-A, 46-B, and 46-C, being letters, were marked and received in evidence.)

The Court: Plaintiff's Exhibit 47, 47-A, -B, and -C, identified and filed.

(Plaintiff's Exhibit Nos. 47, 47-A, 47-B, and 47-C, being letters, were marked and received in evidence.)

The Court: Court will resume its session at 2:15.

(Counsel leave the courtroom.)

[fol. 197] The Court: Plaintiff's Exhibit 48, and 48-A and -B, identified and filed.

(Plaintiff's Exhibit Nos. 48, 48-A, and 48-B, being letters, were marked and received in evidence.)

The Court: Plaintiff's Exhibit No. 49, -A, -B, -C, and -D, identified and filed.

(Plaintiff's Exhibit Nos. 49, 49-A, 49-B, 49-C, and 49-D, being letters, were marked and received in evidence.)

The Court: Plaintiff's Exhibit 50 and 50-A, -B, -C, -D, and -E, identified and filed.

(Plaintiff's Exhibit Nos. 50, 50-A, 50-B, 50-C, 50-D, and 50-E, being letters, were marked and received in evidence.)

The Court: Plaintiff's Exhibit 51, and 51-A, -B, and -C, identified and filed.

(Plaintiff's Exhibit Nos. 51, 51-A, 51-B, and 51-C, being letters, were marked and received in evidence.)

[fol. 198] The Court: Plaintiff Exhibit 52, and 52-A, and -B, identified and filed.

(Plaintiff's Exhibit Nos. 52, 52-A, and 52-B, being letters, were marked and received in evidence.)

The Court: Plaintiff's Exhibit 53, and 53-A, -B, -C, -D, identified and filed.

(Plaintiff's Exhibit Nos. 53, 53-A, 53-B, 53-C, and 53-D, being letters, were marked and received in evidence.)

The Court: Plaintiff Exhibit 54, and 54-A, -B, and -C, identified and filed.

(Plaintiff's Exhibit Nos. 54, 54-A, 54-B, and 54-C, being letters, were marked and received in evidence.)

The Court: Plaintiff Exhibit 55, and 55-A, -B, and -C, identified and filed in evidence.

(Plaintiff's Exhibit Nos. 55, 55-A, 55-B, and 55-C, being letters, were marked and received in evidence.)

[fol. 199] The Court: Plaintiff Exhibit 56, and 56-A, -B, -C, -D, -E, -F, -G, -H, -I, and -J, identified and filed in evidence.

(Plaintiff's Exhibit Nos. 56, 56-A, 56-B, 56-C, 56-D, 56-E, 56-F, 56-G, 56-H, 57-I, and 56-J, being letters, were marked and received in evidence.)

The Court: Plaintiff Exhibit No. 57, and 57-A, were identified and filed.

(Plaintiff's Exhibit Nos. 57 and 57-A, being letters, were marked and received in evidence.)

The Court: Plaintiff Exhibit No. 58 and 58-A, were identified and filed.

(Plaintiff's Exhibit Nos. 58 and 58-A, being letters, were marked and received in evidence.)

The Court: Plaintiff Exhibits 59 and 59-A, 59-B, 59-C, 59-D, 59-E, and 59-F, identified and filed in evidence.

(Plaintiff's Exhibit Nos. 59, 59-A, 59-B, 59-C, 59-D, 59-E, and 59-F, being letters, were marked and received in evidence.)

[fol. 200] The Court: Plaintiff Exhibit 60, and 60-A, -B, -C, and -D, identified and filed.

(Plaintiff's Exhibit Nos. 60, 60-A, 60-B, 60-C, and 60-D, being letters, were marked and received in evidence.)

The Court: Plaintiff's Exhibit 61 and 61-A, -B, -C, -D, identified and filed.

Plaintiff's Exhibit Nos. 61, 61-A, 61-B, 61-C, and 61-D, being letters, were marked and received in evidence.)

The Court: Plaintiff's Exhibit 62, and 62-A, -B, and -C, identified and filed.

(Plaintiff's Exhibit Nos. 62, 62-A, 62-B, and 62-C, being letters, were marked and received in evidence.)

The Court: Plaintiff Exhibit No. 63, and 63-A, 63-B, 63-C, -D, -E, identified and filed.

(Plaintiff's Exhibit Nos. 63, 63-A, 63-B, 63-C, 63-D, 63-E, being letters, were marked and received in evidence.)

[fol. 201] The Court: Plaintiff Exhibit 64, and 64-A, -B, -C, and -D, identified and filed.

(Plaintiff's Exhibit Nos. 64, 64-A, 64-B, 64-C, and 64-D, were marked and received in evidence.)

The Court: Plaintiff Exhibit 65 and 65-A, -B, -C, -D, -E, -F, and -G, identified and filed.

(Plaintiff's Exhibit Nos. 65, 65-A, 65-B, 65-C, 65-D, 65-E, 65-F, and 65-G, being letters, were marked and received in evidence.)

The Court: Plaintiff Exhibit 66, and 66-A, 66-B, 66-C, and 66-D, identified and filed.

(Plaintiff's Exhibit Nos. 66, 66-A, 66-B, 66-C, 66-D, being letters, were marked and received in evidence.)

The Court: Court will recess.

(Thereupon, a recess was taken for lunch until 2:15 p.m.)

[fol. 202] Afternoon Session

(Met pursuant to noon recess at 2:15 p.m.)

Mr. Bowles, Jr.: If Your Honor please, may we have the bailiff call Mrs. Wills.

The Court: All except Mrs. Wills be seated, please. Mrs. Wills, will you come forward?

MRS. NEAL WILLS was duly sworn, and testified in behalf of the plaintiff, as follows:

Direct examination.

By Mr. Bowles, Jr.:

Q. Mrs. Wills, will you state your full name, age, and residence, please, and your age, if you don't mind?

A. I am Mrs. Neal Wills. I live at Canton, Georgia, Route 2. I am forty-seven years old.

Q. Now, Mrs. Wills, what is your first name?

A. Estelle.

Q. How do you spell that?

Mr. Stallard: I didn't get her address.

The Witness: Canton, Route 2.

[fol. 203]

By Mr. Bowles, Jr.:

Q. What is your first name?

A. Estelle.

Q. E-s-t-e-l-l-e?

A. Yes.

Q. Now, Mrs. Wills, how far do you live from Cedar Town, Georgia?

A. About 60 miles.

Q. About how much?

A. Sixty.

Q. Sixty miles?

A. Yes, sir.

Q. Did you have a son-in-law, Jimmie Doyle Queen?

A. Yes, sir.

Q. Whom did he marry?

A. My daughter, Betty Ann.

Q. Betty Ann?

A. Yes, sir.

Q. Could you tell us whether or not your son-in-law was killed?

A. Yes, sir.

Q. On what date?

A. June 24, 1959.

Q. Now, on that day, would you also tell us whether or [fol: 204] not your daughter, his wife, was about to go to the hospital?

A. Yes, sir.

Q. For what reason?

A. For the birth of their son.

Q. Did she go to the hospital shortly after his death?

A. Yes, sir, she was carried to the hospital on the 26th, following the day after he was buried.

Q. When did she return from the hospital?

A. On July 1.

Q. Mrs. Wills, tell me please, ma'am, at the time that your daughter's husband was killed, where were you living?

A. I was living at that time on Route 1, Cedar Town.

Q. Now, how far is that from Cedar Town?

A. About 9 miles.

Q. Now, where was your son-in-law and daughter living?

A. They was living in Cedar Town at that time.

Q. Now, was anybody living with them?

A. Yes, my son and his wife.

Q. That would mean that your son and his sister and his wife and her husband were all living in the same house? [fol: 205] A. That's right.

Q. Now, when your daughter, Betty Ann's husband was killed, what did they do; where did they live?

A. Where did Betty Ann and her husband live?

Q. Your son and your other daughter, what did they do when the widow went to the hospital to have the baby; what did the others in that household do?

A. Well, they went with us; took care of her after hospital.

Q. Did they move over to your house?

A. Yes, sir, they moved in the house with me.

Q. Well, now, when she came back from the hospital on July 1, 1959, were all of them living in the house there with you?

A. Yes, sir.

Q. Now, can you tell me, please, ma'am, did you know an attorney from Atlanta, Georgia, named Tod Lewis, Jr.?

A. I never knew him.

Q. Can you tell me whether you ever saw him or not, or after the death of your son-in-law?

Mr. Stallard: Now, Your Honor please, I want to object to this testimony. It has nothing to do with the case at bar. It is something that happened in the State of Georgia. It would not be binding at all here in Virginia.

[fol. 206] The Court: It might go to the question of reasonable apprehension.

Mr. Bowles, Jr.: That is the purpose for which it is offered, sir.

The Court: The objection will therefore be overruled.

Mr. Stallard: Exception for the reasons stated.

By Mr. Bowles, Jr.:

Q. Could you tell us whether you ever saw Mr. Tom Lewis, Jr., after your son-in-law was killed?

A. Yes, sir, he came to our house the next day after my daughter was brought home from the hospital.

Q. Would you tell us, please, how he introduced himself, and what he said?

A. Well, he came in, and he said that he was Mr. Thomas Lewis, Jr., from Atlanta. He was a lawyer, and he had heard about the accident, and he wanted to come down and see if he could take the case for Betty.

Q. Did he tell you whether or not he was connected with the Brotherhood of Railroad Trainmen in any way?

Mr. Stallard: Now, Your Honor please, counsel is leading the witness, just suggesting the answer.

[fol. 207] The Court: Yes, that is true. That is true but what we are getting at, after all, are the facts. Are the facts obtainable, Mr. Beecher? You have the record.

Mr. Stallard: Well, I don't know, but just to lead the witness, ask him, "Did he tell you so-and-so," it is certainly hearsay.

The Court: No, we don't want that. Well, change your form of question, Mr. Bowles.

Mr. Bowles, Jr.: Your Honor, that I am directing her attention to a particular fact is perfectly true, but—

The Court: I think the question is leading in form.

Mr. Stallard: I wish to object on the further ground that anything he said would be hearsay.

Mr. Bowles, Jr.: I expect at the appropriate time, sir, to put into evidence the directory of the Brotherhood of Railroad Trainmen that was in effect as of the time that we are now speaking, and show that Mr. Thomas Lewis, Sr., and Mr. Tom Lewis, Jr., were both regional counsel for the Brotherhood of Railroad Trainmen, and are still, right [fol. 208] now, today, according to the latest directory which, at my request, was furnished to me by Mr. C. R. Maher, the chief clerk of the Legal Aid Department, by letter, which I have here in my bag, sir.

The Court: That is enough, Mr. Bowles. With that explanation, on this point of hearsay which is representing himself to be connected with the Brotherhood in the position of regional counsel, I suppose the objection to any hearsay there—it is the ultimate fact, that is important, and if it is going to be connected up,—objection will be overruled.

Mr. Stallard: Exception.

By Mr. Bowles, Jr.:

Q. Mrs. Wills, would you state to us what he said, if anything, as to who he was speaking for besides himself?

A. I don't hardly know how to answer that. What you mean by it, I mean?

Q. You say he told you he was a lawyer?

A. Yes.

Q. Did he tell you what kind of a lawyer he was?

A. Well, he said he was just a lawyer from Atlanta, and came down, you know, to want to try to get Betty to go to [fol. 209] Atlanta or him handle her case for her, or settle.

Q. I will ask you this, Mrs. Wills: What organizations, if any, connected with the railroad, did your son-in-law belong?

A. He was a trainman.

Q. On what railroad?

A. The Central of Georgia Railroad.

Q. Did he belong to the union, the Brotherhood?

A. Yes.

Mr. Stallard: Your Honor please, he may belong to a whole lot of brotherhoods. I would like to know definitely whether he belonged to the defendant.

Mr. Bowles, Jr.: May I ask her what brotherhood he belonged to?

The Court: What brotherhood?

By Mr. Bowles, Jr.:

Q. What brotherhood did he belong to?

A. Well, I really don't know. I don't know that much about it.

Q. He was a trainman, you say?

A. Yes.

Q. Now, just go ahead and tell us, please, ma'am, what Mr. Lewis said to your daughter. Were you present while he was talking to your daughter?

[fol. 210] A. Yes, I was there.

Q. How long did he stay there?

A. About an hour.

Q. Did he show any papers or anything of that sort?

A. Yes, he brought lots of papers and was showing them to her, and wanting her to sign some papers, but she didn't sign them.

Q. Well, now, just go ahead and tell His Honor as much as you can remember about the situation, as it prevailed there, and what Mr. Lewis said, and what he said as to who he was and whom he represented, and just that whole situation.

A. Well, when he came in, he said that he was a lawyer: Mr. Thomas Lewis from Atlanta, Georgia, and he wanted to get Betty to sign a paper, you know, form to represent her as her lawyer, and he said that he would assure her a great bigger settlement than she would get otherwise, to settle direct with the railroad company, but Betty objected. She didn't sign.

Q. Now, Mrs. Wills, would you tell us whether anybody else came to see your daughter, and if so, when?

A. Yes, sir, on the 4th of July, Mr. Byington from Birmingham, Alabama, he came up there.

[fol. 211] Q. Who did he say he was?

A. He said he was the chairman of the Brotherhood of the Railroad, and he wanted to carry Betty's case to Birmingham. He also promised her a great larger sum of money, and a bigger settlement, if she would carry her case on there.

Q. Did he mention, or not, any lawyer's name that he wanted to carry the case to in Birmingham?

A. I believe his name was Mr. Rives, Lawyer Rives, from Birmingham.

The Court: How would you spell that?

Mr. Bowles, Jr.: A. L. Rives, R-i-v-e-s.

By Mr. Bowles, Jr.:

Q. Now, what did Mr. Byington say, and tell us as much as you can remember of that conversation and what he told your daughter?

A. Well, on this occasion, he came and he said that when Betty got able—

Mr. Stallard: If Your Honor please, I object to all of this on the ground it is hearsay. I don't know who Byington is. Maybe the lady knows. I would like to know where he lives, his full name, so I could check up on that.

The Court: On the ground of hearsay, Mr. Stallard, we [fol. 212] are not undertaking to establish facts by what he said. What he said representing himself about it, is not put in in an effort to show that he told the truth or that those are the facts, but this evidence is admissible as a representation. It is quite a distinction, in my judgment, and the objection on the hearsay ground is overruled.

Mr. Stallard: I would like to know his full name, and where he lives, so that I might check up on who he is.

The Court: Byington is the name.

Mr. Bowles, Jr.: Byington.

A. Byington.

Mr. Bowles, Jr.: B-y-i-n-g-t-o-n.

The Court: Will you spell that for me and for Mr. Stallard again?

Mr. Bowles, Jr.: B-y-i-n-g-t-o-n.

The Court: He is from Birmingham, you say, the chairman of the Brotherhood Chapter?

Mr. Bowles, Jr.: No, sir, he is not from Birmingham.

Mr. Bowles, III: Lincoln, Georgia.

Mr. Bowles, Jr.: Now, if Your Honor please, at the appropriate time, I shall introduce Exhibit 74-C as a series [fol. 213] of exhibits, being the directory of the Grand Lodge, and subordinate lodges of the Brotherhood of Railroad Trainmen, and now have in my hand the quarterly issue of July, 1961, and I read: "Central of Georgia, Lodges 215, 302, 332, 376, 649, 721, 939, 1124, B. G. Byington, 1124, Room 300, Professional Building, Macon, Georgia." He was the chairman, sir, of that entire railroad for the Brotherhood of Railroad Trainmen.

Mr. Stallard: Your Honor please, I object to that settlement on the ground that this witness hasn't testified that that is the man. As a matter of fact, she said he is from Birmingham.

The Court: This is just in advance, as I understand it, of an exhibit that you are going to offer. Objection is overruled.

Mr. Stallard: Exception.

Mr. Bowles, Jr.: I suggest, sir, that the witness did not say that he was from Birmingham; that he was attempting to take this lady to Mr. Rives, who was a regional counsel in Birmingham. He was from Macon.

By Mr. Bowles, Jr.:

Q. Now, Mrs. Wills, how long did Mr. Byington stay? [fol. 214] A. On the first trip, I guess he stayed about approximately two hours.

Q. Tell us in as much detail as you can remember right now, what he said in those two hours?

A. That would be hard to do, but I will try to bring out the most important things. Well, the main thing he came in and introduced himself as Mr. B. G. Byington from Macon, which he represented to carry Betty Ann to Birmingham to this lawyer, Rives, and he said that he would like very much for her to go with him, when she was able,

and that he would see that she got a greater settlement there than she would in Cedar Town, because he was more capable of handling the case than any lawyer in Cedar Town or anywhere else.

Q. Did he have anything to—did he have any papers to show you that there had been other situations in which he had gotten big verdicts?

A. Oh, yes, he brought those along, too, clippings from papers, and also some cancelled checks and things where he had made other settlements with other people.

Q. Did he or did he not ask your daughter to sign a contract?

A. Yes, he asked her to.

Q. Your daughter did not sign a contract?

A. No, she didn't.

[fol. 215] Q. Did Mr. Byington ever come back again?

A. Yes, sir, he came back again.

Q. Can you remember approximately when that was?

A. Well, now, on this first trip, it was the 4th of July; he came back again in August somewhere around the middle of August, I guess, and then again in about the first of September.

Q. And how long did he stay during August?

A. Oh, he didn't stay but I guess maybe a half-hour.

Q. What did he want done on that trip?

A. Well, just the same thing. He still insisted that she went with him or let him go and carry her to Birmingham for the settlement.

Q. When he came back in September, how long did he stay?

A. I say about thirty minutes that time.

Q. What did he want your daughter to do at that time?

A. He still insisted that she went with him.

Q. How was he going to take her?

A. In a car.

Q. What kind of a car?

A. Oh, it was a big Cadillac.

[fol. 216] Q. You remember whether it was old or new?

A. It was a new one.

Q. Was there any conversation discussed about how comfortable your daughter would be?

A. Oh, yes, he said that she would be very comfortable, and also insisted that I went along and the baby, we would all be taken care of, and if she needed money for other expenses before she got her settlement, that he would see that that was all taken care of.

Q. Now, Mrs. Wills, will you tell us, please, whether or not any offer was extended to you to go along with your daughter?

A. Yes, he offered me as much money as I would need for my transportation there and back.

Q. Did he offer to take the baby, too?

A. Yes, sir.

Q. You refused?

A. We refused.

Q. Did you say anything to him with regard to whether he should or should not come back again?

A. On the third trip, I asked him to please leave and go back to Alabama, if he wanted to, or wherever he wanted to go, and not come back and worry my daughter any more.

[fol. 217] Q. Mrs. Wills, had you ever known either of these men before?

A. I had never seen them before.

Q. Did you send for them?

A. No, sir, I did not.

Q. Do you know of anybody that did send for them?

A. No, sir, they came on their own.

Q. When Mr. Byington came the first time, did anyone come with him?

A. Yes, sir, Mr. Parker.

Q. Who is Mr. Parker?

A. He is one of the men that worked on the Central of Georgia Railroad.

Q. With your son-in-law?

A. Yes, sir.

Q. What is his name, Parker Whitfield?

A. Parker Whitfield.

Q. Did you look at the things that Mr. Lewis had with him in the way of papers?

A. Well, I just kind of picked them up and glanced over them and threw them away.

Q. When he left, do I understand from your testimony that you had custody of them?

A. Yes.

[fol. 218] Q. The papers that he left, what did you do with them?

A. I took them out and burned them.

Q. Did you keep one of them?

A. Yes, sir, I think through a mistake, there was one left.

Q. I ask you whether or not you would be able to identify this as the paper you didn't burn up, or rather, a copy of it?

Mr. Bowles, Jr.: I explain, Your Honor, that I will show later that the originals of these papers are not obtainable for this Court. They are already in another court, and could not be withdrawn, but those circumstances I will explain to Your Honor later.

By Mr. Bowles, Jr.:

Q. Would you say whether or not that is a copy of one of the papers that he left with you?

A. Yes, this is one of them.

Q. Would you file that, please, as the Exhibit Estelle Wills No. 1, or A?

The Court: Mrs. Estelle Wills A will be very well..

INTRODUCTION OF PLAINTIFF'S ESTELLE WILLS EXHIBITS
NO. A AND B WITH COMMENTS OF BOTH PARTIES

(Plaintiff's Estelle Wills Exhibit No. A, a paper, was identified and filed in evidence.)

[fol. 219] By Mr. Bowles, Jr.:

Q. Now, Mrs. Wills, do you of your own knowledge know anything about any correspondence that your daughter received from Mr. Byington?

A. Other than the visits?

Q. Did you see any letters that your daughter received from Mr. Byington?

A. Yes, sir, I saw one.

Q. Do you recall when that was, whether it was after his first visit, or his second visit, or when they were?

A. Well, I just really don't know when the letter—I don't know whether it was after the first visit—it was probably after the second visit.

Q. I hand you here, and ask you whether or not you can identify these. They are purported to be photocopies of three letters, and ask you whether or not you can identify any of them, as having seen them, as having been received by your daughter through the mail? You said you remember your daughter receiving a letter. I hand you three letters. Could you identify any one of them as the one you have seen?

A. Yes, this is the three.

Q. What is that?

A. Yes.

[fol. 220] Q. Is it one, or all three?

A. This one.

Q. Oh, beg your pardon. Would you offer that in evidence as Estelle Wills Exhibit No. B? This is a letter dated July 10, 1959.

The Court: So identified and filed.

(Plaintiff's Estelle Wills Exhibit No. B, a letter, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Do I understand, Mrs. Wills—

Mr. Stallard: Now, Your Honor please, I object to this. The witness said she only identified one letter, and he is trying to get her to identify some other copies.

The Court: Well, I don't know whether she can or not. Are you going to ask?

Mr. Stallard: He had them in his hand, and is going to wait for her to identify them.

Mr. Bowles, Jr.: Would you wait until I ask a question?

The Court: Wait one minute.

Mr. Stallard: I wish you would read that he handed her three letters.

[fol. 221] The Court: I know that. We all know that. He handed her three, and she said she identified this one. Now, Mr. Bowles, would you conclude your question, as you are going to ask it; and don't answer it until I say so.

By Mr. Bowles, Jr.:

Q. Do I understand, Mrs. Wills, that you cannot identify these two letters, as having seen them before?

A. Well, I just can't remember now. It has been going on three years, and I just cannot remember.

Q. That is what I understood you to say. That, sir, was what I was going to ask her, before I was interrupted.

The Court: Well, in view of the answer, it is certainly not objectionable. You withdraw all objections, in view of the answer?

Mr. Stallard: Yes, sir, I certainly will.

The Court: All right.

Mr. Bowles, Jr.: Witness ready.

Cross examination.

By Mr. Stallard:

Q. Mrs. Wills, you have identified a letter here which is identified as Exhibit B, Estelle Wills; this letter is addressed to Mrs. Betty Ann Queen, 110 Park Street, Cedar [fol. 222] Town, Georgia, under date of July 10, 1959, and signed by Mr. B. A. Byington, general chairman. In the first line, this letter says:

"This will acknowledge your letter of July 8, 1959."

Did your daughter write Mr. Byington?

A. He asked her if she wanted to come to Birmingham to please drop him a note, if she wanted to come or if she didn't. She dropped him a little short note telling him that she did not want to come, and for him not to come, please not to make any reservations for her. That is why that letter was wrote to her.

Q. Well, now, this letter states, "Advising you that you

have moved, and your address is now 110 Park Street, Cedar Town, Georgia?"

A. That's right.

Q. So your daughter did write Mr. Byington a letter?

A. She wrote him a note.

Q. Now, the next paragraph says,

"This information will be recorded in our files in line with my conversation with you when I was in Cedar Town last Saturday. Further contact will be made with you in due time."

[fol. 223] Did that indicate that your daughter did not want to see Mr. Byington?

A. She did not.

Q. Well, but she voluntarily wrote and told him that her address had been changed.

Mr. Bowles, Jr.: I object to the word "voluntarily," in the light of the testimony.

The Court: This is cross-examination. The objection is overruled.

A. No, she didn't.

The Court: It is cross-examination. Now, read the question, please.

(The court reporter read the last question by Mr. Stallard.)

By Mr. Stallard:

Q. Did she not? Nobody made her write the letter?

A. He asked her if she would write him, so he could make reservations, and she dropped him the note and told him to please not come, that she wasn't going to Birmingham.

Q. This letter doesn't say that at all; this letter states that her address is changed. You take this letter and show me where she said that.

[fol. 224] A. Her address had been changed. She lived on Russell Street when the death of her husband; and after that, then she was, after he was killed, we lived on Route 1,

Cedar Town, and she was then carried—we moved from Cedar Town, Route 1, to 110 Park Street.

Q. But now, this letter doesn't say anything about your daughter not wanting to see him, does it?

A. I don't know what the letter—well, I don't know. I am not interested in it.

Q. Now, you testified on direct examination that Mr. Parker Whitfield, who worked with your son-in-law, came to your daughter's home with Mr. Byington; is that a true statement?

A. That is true.

Q. Do you recall what Mr. Parker Whitfield said when he was there?

A. No, Mr. Whitfield didn't say anything. He just listened.

Q. What was his occupation on the railroad with your son-in-law?

A. I don't know.

Q. But you knew that he worked with your son-in-law?

A. Yes.

[fol. 225] Q. And you don't know what they were doing?

A. No, I wasn't interested in it.

Q. Did he tell you that he, Mr. Parker Whitfield, had notified Mr. Byington that your son-in-law had been killed?

A. Would you repeat that?

Mr. Stallard: Read it back, please.

(The court reporter read back Mr. Stallard's last question.)

A. (Continuing) I don't know who notified him.

By Mr. Stallard:

Q. Now, the letters that you did not identify, had certain information. I am going to ask you, based on that information, did Mr. Byington write a letter to your daughter and tell your daughter that she was entitled to certain insurance, as a result of his being killed?

A. I don't remember.

Q. Did he also advise her that she was entitled to some other compensation, in any letter?

A. I don't remember all of that.

Q. Did you ever hear her discuss the matter that the first letter she received from Mr. Byington concerned some insurance money?

[fol. 226] A. I don't know.

Q. Well, could you say whether or not when Mr. Parker Whitfield brought Mr. Byington to your daughter's home, that it was not concerning the insurance and compensation she was entitled to, as a result of his death?

A. He wanted my daughter to go to Birmingham to settle with this lawyer.

Q. Well, now, was that all that was discussed; would you say that was all?

A. That is all I can remember, because I wasn't interested in him at that time, and I am not interested in him now.

Q. Well, I am not going by whether you were interested, but I want to know did Mr. Byington come there with some insurance money that was due your daughter, as a result of the death, carried with the Brotherhood of Trainmen?

A. I don't remember.

Q. But did she get any insurance money?

A. I couldn't say if she did or if she didn't.

Q. Now, wouldn't you know whether she got—is she here?

A. Yes, my daughter is here.

Q. Well, she would know, and I will ask her.

A. All right.

[fol. 227] Mr. Stallard: That is all.

The Court: Any further questions? That is all, Mrs. Wills.

(Witness excused.)

ANNIE QUEEN DOEG was duly sworn, and testified in behalf of the plaintiff as follows:

Direct examination.

By Mr. Bowles, Jr.:

Q. Would you state your present full name?

A. Annie Doeg.

The Court: Raise your voice, please.

Mr. Bowles, Jr.: Did you hear that, sir, Annie Doeg, D-o-e-g?

The Court: What was the full name of this witness?

Mr. Bowles, Jr.: Annie Doeg, D-o-e-g.

The Court: D-o-e-g! Thank you.

By Mr. Bowles, Jr.:

Q. Now, Mrs. Doeg, how old are you?

A. Twenty-one.

Q. And where do you now live?

[fol. 228] A. 239 East Fairmount, Cedar Town, Georgia.

Q. In where?

A. Cedar Town.

Q. Now, what was your name, what name did they give you when you were born?

A. Betty Ann.

Q. Betty Ann what?

A. Wills.

Q. Wills?

A. Yes, sir.

Q. Now, who did you first marry?

A. Jimmie D. Queen.

Q. Jimmie D. Queen?

A. Yes, sir.

Q. Where did he work?

A. For the Central of Georgia Railroad.

Q. What was his job?

A. He was a trainman.

Q. What organization, if any, did he belong to?

A. To the Brotherhood.

Q. Now, would you tell me, please ma'am, what day he was killed, and where?

A. June 24, 1959, in Summerville, Georgia.

Q. Now, how soon after his death did you go to the [fol. 229] hospital?

A. It was the second day.

Q. Second day after he was killed?

A. Yes, sir.

Q. And I believe you gave birth to a child?

A. Yes, sir.

Q. Now, when did you get out of the hospital?

A. I believe it was the 2nd of July.

Q. Did you go back to your home, or to some other place?

A. I went to Mother's house.

Q. Did anybody else go to your mother's place with you?

A. My brother and his wife.

Q. And what is your brother's name?

A. Harold Wills.

Q. And what is his wife's name?

A. Mary Ann.

Q. And she is your sister,—she is your sister-in-law?

A. Yes, sir.

Q. And her name is Mary Ann Wills?

A. Yes, sir.

Q. Now, where, at the time of your husband's death, [fol. 230] were you, and your brother and his wife, and your husband living?

A. At 824 Russell Street.

Q. All at the same house?

A. Yes, sir.

Q. Now, when your husband was killed and you were about to go to the hospital, what sort of family arrangement did you all then make?

A. Well, after I went to the hospital and came back, we went to Mother's house and lived.

Q. And where was your mother's house?

A. At Route 1, Cedar Town.

Q. And how far outside of Cedar Town was that, about?

A. About 9 miles.

Q. Now, can you tell me when you got back from your hospital to your house, whether anybody came to see you about your husband's death?

A. Well, Mr. Lewis came from Atlanta.

Q. Did he say what his name was?

A. Tom Lewis, Jr.

Q. Did he say what he was?

A. Well, he said he was representing the railroad.

Q. What did he do; I mean, what was his business professionally?

A. Well, he just tried to get my case to take it to Atlanta; told me I could get more money out of it if I took it up there and let him handle it.

Q. Did he tell you what he did to earn a living?

A. No, well, he was in law business, himself.

Q. He was a lawyer?

A. Yes, sir.

Q. And what did he—how long did he stay there?

A. Oh, about an hour.

Q. And during that hour, what did he want you to do?

A. Well, he tried to get me to go to Atlanta and let him handle the case, and he tried to get me to sign some papers that I would go, and I told him I wasn't interested, but he kept on anyway. So he left some papers, and said if I was interested, that I could drop him a letter and let him know.

The Court: Won't you speak a little louder, so we can hear you with less effort? Just take your time.

A. (Continuing) Yes.

The Court: And, if you will, speak directly to me, it will help. Just take your time.

[fol. 232] By Mr. Bowles, Jr.:

Q. Mrs. Doeg, you have got some competition out here on the street in the form of buses, so if you can try to meet it, please, ma'am.

Now, did Mr. Lewis ever come back?

A. No, sir.

Q. Did anybody else ever come to see you?

A. No, sir.

Q. Did any other person than Mr. Lewis ever come to see you?

A. Mr. Byington.

Q. Now, I want to ask you, did you, or anybody, with your knowledge on your behalf, ever send for either of these men?

A. No, sir.

Q. Did you ask them to come to see you?

A. No, sir.

Q. Had you ever known them before?

A. No, sir.

Q. Now, when did Mr. Byington come?

A. On July 4.

Q. And what did he say he wanted, and what did he say he was, and who he was, and tell us what he said?

A. Well, he said he was the chairman of the Brotherhood [fol. 233] Railroad representing, and that he liked to get my case, to take it to Birmingham, Alabama, so that he said that I would get more money out of it if I would take it down there.

Q. And what lawyer was he speaking for?

A. A. L. Rives.

Q. And tell us what he had to say about why you should go there?

A. Well, he said that those lawyers down there could get much more money than I could get from Cedar Town, and he was showing me some copies of money and things where he had been able to get much more money than anybody around here could get.

Q. Did you say you would go, or what did you do?

A. No, sir, I told him I wouldn't go. I wasn't interested.

Q. Did he ask you to think it over?

A. Yes, he wanted me to think it over and leave him know, but I told him I wouldn't be interested.

Q. Did you write him a note with whether you would or whether you wouldn't?

A. No, sir.

Q. You did not?

A. No, sir.

[fol. 234] Q. Did he come back?

A. Yes, sir.

Q. When did he come back?

A. I believe it was in October about the middle of October he came back.

Q. And what did he have to say to you then?

A. Well, he was still trying to get me to go to Birmingham.

Q. Did you agree to go to Birmingham?

A. No, sir.

Q. What did he want you to go to Birmingham for that time?

A. Well, he was still trying to get me to go over there to take it to A. L. Rives, so that he could get more money for me.

Q. Did you agree to go that time?

A. No, sir.

Q. Did he show you anything at that time, or give reasons why you should go, on that visit?

A. Well, he showed me some papers and some photostatic copies of money and stuff, where he had got a whole lot more money for other people.

Q. How long did he stay that time?

A. Well, he did not stay too long.

[fol. 235] Q. Did he ever come back again?

A. Yes, sir, he came back around the first of September, I believe.

Q. Now, what did he say that time?

A. Well, he was still trying to get me to go to Birmingham, and I told him I wasn't interested.

Q. Was your mother present or not, during these conversations?

A. Some of them she was.

Q. Who else was present during these conversations with Mr. Byington?

A. Mary Ann was there part of the time.

Q. And was anyone else present during your conversations with Mr. Lewis or Mr. Byington?

A. Well, I believe Mary Ann was there when Mr. Lewis came, part of the time.

Q. Now, about your brother, was he there?

A. Yes, he was there a little while.

Q. Now, you never did sign up with either of these gentlemen, did you?

A. No, sir.

Q. You did settle your case?

A. Yes, sir.

Q. Did Mr. Byington write you any letters?

[fol. 236] A. Yes, sir.

Q. I hand you three letters, one of which, Your Honor, is Exhibit Estelle Wills No. B, and ask you whether or not you can identify these as being photocopies of letters you received from Mr. Byington. Would you read them carefully, please, ma'am?

A. Yes.

Q. Your answer was yes?

A. Yes, sir.

The Court: You identify all three of them, is that what you mean?

The Witness: Yes, sir.

By Mr. Bowles, Jr.:

Q. Now, at the same time, Mrs. Doeg, I ask you to look at this piece of paper which purports to be a photograph, a photostatic copy of the envelopes in which these three letters came, and in addition, photocopies of three signatures of yourself which purport to identify on the back of these envelopes, the envelopes; themselves; do you remember doing that?

A. Yes, sir.

Q. Are those the photocopies of the envelopes that match the dates of these letters?

A. Yes, sir.

[fol. 237] Q. And you got those?

A. Yes, sir.

Q. Did you reply to any of them?

A. Well, he wanted me to write and let him know when I moved from out in the country, to let him know where that I had moved to.

Q. Did you do that?

A. Yes, sir; I dropped him a note.

Q. Did you tell him when you did that, whether you would or would not go to Birmingham?

A. I told him I was not interested, but I would give him my address.

INTRODUCTION OF PLAINTIFF'S DOEG EXHIBITS No. A
THRU C WITH COMMENTS OF BOTH PARTIES

Q. Now, I hand you now a letter from Mr. Byington dated June 29, and with it, the photocopy of the envelope of same, postmarked Macon, Georgia, June 29. Now, Mrs. Doeg, I hand you now a letter addressed, dated June 29, 1959, Mrs. J. M. Queen, Russell Street, Cedar Town, Georgia, signed by B. G. Byington, general chairman, on the stationery of the Brotherhood of Railroad Trainmen, General Grievance Committee, Central Georgia Railways, to which is attached photocopy of an envelope addressed to you at that address, and stamped Macon, June 29, 1959, and also the photocopy of the reverse side of that envelope, your signature, Betty Ann Queen, September 28, 1959, and ask you whether you will offer that as your exhibit, Betty [fol. 238] Ann Doeg, No. A?

Mr. Stallard: What was that exhibit?

(Plaintiff Doeg Exhibit No. A, a letter, was identified and filed in evidence.)

By Mr. Bowles, Jr.:

Q. Now, I will hand you also what has already been put into evidence as Estelle Wills Exhibit No. B, a letter dated July 10, on the same stationery, July 10, 1959, signed by B. G. Byington, general chairman, addressed to Mrs. Betty Ann Queen, 110 Park Street, Cedar Town, Georgia, re: Jimmie D. Queen, deceased, to which has now been attached photocopy of an envelope with postmark Macon, Georgia, July 10, 7:30 p.m., 1959, and to which is also a photocopy of your signature on the reverse, Betty Ann Queen, September 28, 1959, and ask you will you also offer that as your exhibit, with your testimony, Annie Doeg Exhibit B?

A. Yes.

(Plaintiff's Doeg Exhibit No. B, a letter, was identified and filed in evidence.)

By Mr. Bowles, Jr.:

Q. I hand you also another letter on the same stationery, dated July 23, 1959, addressed to you at the same address [fol. 239] on the same subject, signed by B. G. Byington, general chairman, to which is attached a photocopy of an envelope stamped Macon, Georgia, July 23, 7:30 pm, 1959, and a photocopy of your signature, Betty Ann Queen, September 28, 1959, on the back, and ask you to identify that as an exhibit with your testimony, Annie Doeg.

(Plaintiff Doeg Exhibit No. C, a letter, was marked and received in evidence.)

Mr. Bowles, Jr.: Your witness.

Cross examination.

By Mr. Stallard:

Q. I believe your exhibit, Annie Doeg Exhibit A, is a letter addressed to you, Mrs. Doeg, when you were Mrs. J. D. Queen, under date of June 29, 1959, from Mr. B. G. Byington, general chairman, and, among other things, he states to you:

"Please accept the heartfelt sympathy of all members of the Brotherhood Association employees and fellow workers of your kind and loving husband . . ."

Did Mr. Byington know your husband?

A. I don't know.

Q. Now, that is the first paragraph. Then the next paragraph, he says,

"Brother Queen, having been farsighted to the extent that he was a member of the Brotherhood, entitles you to all the benefits we can afford, such as assisting you with your claims under the Railroad Retirement Act . . ."

Did you get any money under the Retirement Act?

A. Yes, sir.

Q. How much did that amount to?

A. \$25,000.

Q. \$25,000?

A. Yes, sir.

Q. And he assisted you in filling out certain forms?

A. Yes.

Q. That didn't have anything to do with his claim for death; that was under an insurance feature, wasn't it?

A. No, sir, that was the claim.

Q. The retirement, the Railroad Retirement Act?—that wasn't the amount—I am talking about what did you get under the Railroad Retirement Act; he was a member of the retirement, wasn't he?

A. Yes, sir.

Q. Didn't you get certain benefits as the widow, and your [fol. 241] child?

A. Yes, sir.

Q. Mr. Byington helped fill out those papers, actually he brought them to you, didn't he?

A. No, sir.

Q. Well, he states in his letter, "which is an annuity paid monthly for you, and as I understand, a child soon to be born." Where did he get that information from?

A. I don't know.

Q. Well now, he also tells you, does he not, that he is coming down to see you on July 4. Did he tell you in a letter that he—weren't you looking for Mr. Byington to come down to see you?

A. No, sir.

Q. You were not looking for him?

A. No, I didn't even know the man.

Q. Whom did he come with, then?

A. He come with Parker Whitfield.

Q. Now, this letter states this:

"I plan at present to be in Cedar Town either Saturday or Sunday, July 4th or 5th, and will be pleased to call on you while in Cedar Town."

This is addressed to you on June 29. Did you receive [fol. 242] this before you saw the man? I want you to look at it.

A. I don't remember if I did or if I didn't.

Q. Well, he tells you that he is coming down to see you. Now, when did you receive the letter?

A. The date is on here, I reckon.

Q. Well, he told you he was coming down to see you on July 4, didn't he? Didn't he tell you he was coming to see you?

A. No, he didn't tell me in person he was.

Q. Well, he told you in the letter he was, didn't he, that he was coming down to see you?

A. Yes, he said he was. This is the first I ever heard about it.

Q. Did he bring you any papers on your retirement?

A. No, sir.

Q. He didn't bring you any papers?

A. No, sir, he sure didn't. He didn't have a thing to do with it.

Q. He didn't have a thing in the world to do with it?

A. No.

Q. Did your husband have any insurance with the Railroad Brotherhood?

A. No, sir.

[fol. 243] Q. He didn't have any insurance?

A. No, sir.

Q. He doesn't mention insurance in this letter, but he does mention that your husband was entitled to certain claims under the Retirement Act. Now, did he come to see you on July 4?

A. Yes, sir.

Q. He stated he would be at your house either the 4th or 5th. Do you know who came with him?

A. Parker Whitfield.

Q. Was Parker Whitfield a friend of your husband's?

A. Yes, sir.

Q. Well, now, did Parker Whitfield say that he brought Mr. Byington to your home?

A. Yes, sir.

Q. He did?

A. Yes.

Q. Well, now, Mr. Byington had written you before Parker Whitfield came with him, had he not?

A. Yes, sir.

Q. Now, I ask you in another letter which I have here, if he didn't write you and say that he was going to be

back down to see you, but something happened, and he didn't come, but later on, he came. Do you remember him [fol. 244] writing you another letter and saying that he was sorry he hadn't been able to get down to see you?

A. Yes, sir.

Q. That letter was written July 10, wasn't it?

A. I don't remember.

Q. Now, he came to see you on July 4, and on July 10 he acknowledged receipt of a letter from you on July 8; is that correct? Read this, and see if it is correct.

A. Yes.

Q. Is that correct?

A. Yes.

Q. You wrote him and told him you were moving, and he said that he recorded the information in his file, didn't he?

A. Yes, sir.

Q. Now, when he was down to see you, your mother, here, has identified as Estelle Wills Exhibit A, what purports to be an Amendment to the Federal Employers Liability Act, 76th Congress, United States Congress, and signed by the President August 10, 1939. Where did you get this instrument?

A. From Lewis.

Q. From Mr. Lewis?

A. Yes.

Q. He left that with you?

[fol. 245] A. (No answer)

Q. Now, talking about Mr. Lewis, had you ever seen Mr. Lewis before?

A. No, sir.

Q. Would you know him if you saw him now?

A. I might.

Q. Do you know, as a matter of fact, that he was a lawyer, or did he represent himself to be a lawyer?

A. Well, he said he was a lawyer.

Q. Did he leave any card that would indicate he had visited you?

A. Yes.

Q. He did leave a card; have you got the card?

A. No, sir.

Q. Did he write you a letter after he left?

A. No, sir.

Q. And you never had seen him before?

A. No, sir.

Q. How far do you live from Atlanta?

A. Oh, it's about 60 miles.

Q. About 60 miles. Now, Mr. Whitfield was a close friend of your husband's, you say?

A. Yes, sir.

Q. Did he come to your home before your husband was [fol. 246] killed; was he a personal friend?

A. No, sir.

Q. Do you know why he came with Mr. Byington?

A. To show him where we lived.

Q. To show you where he—well, Mr. Byington had written you before, though, hadn't he?

A. No, sir.

Q. He had not written you before?

A. Not until he come out to the house.

Q. Well, now, I have just shown you a letter stating—you said you received it under date of June 29—that he was coming to your house on July 4.

Mr. Bowles, Jr.: She couldn't have received it on the 29th, when it was postmarked in Macon on the 29th, sir.

By Mr. Stallard:

Q. Did you see it any time between June 29 and July 4?

A. I don't remember.

Mr. Bowles, Jr.: If Your Honor please, I would remind Mr. Stallard that this lady was in the hospital having a baby during all of this time.

The Court: Well, the cross-examination may proceed.

[fol. 247] By Mr. Stallard:

Q. Yes, sir. Well, now, this letter tells you that Mr. Byington will be in to see you, he says,

"I plan at present to be in Cedar Town either Saturday or Sunday, July 4 or 5th, and will be pleased to call on you while in Cedar Town."

He came there, you say, on July 4, with your husband's friend, and that is true, isn't it?

A. Yes, sir.

Q. Didn't you expect to see him either on July 4 or 5th; weren't you looking for him?

A. No, I wasn't looking for him.

Q. Well, you had received a letter, hadn't you?

A. Not on July 4, I hadn't.

Q. Well, it was addressed to you on June 29 and post-marked Macon, Georgia. How far is Macon, Georgia from your town of Cedar Town?

A. Well, it is over 100 miles.

Q. About 100 miles; well, when he came, when did you receive this letter? Would you know?

A. No, I don't remember.

Q. Well, you have kept the envelope, and you have introduced it in court; wouldn't you have some approximate [fol. 248] knowledge?

A. No.

Q. Well, now, did anybody compel you to write Mr. Byington a letter under date of July 8, and tell him you were moving, and your address would be different?

A. He had.

Q. Well, now, nobody compelled you to write him though, on July 8, and say, "I have moved," nobody asked you to do that, did they?

A. No, nobody but Mr. Byington.

Q. He asked you to do that. Well, he acknowledged that letter, didn't he?

A. I reckon.

Q. Whom have you talked to about this case before you came here today?

A. I haven't talked to anyone.

Q. I want to show you a letter under date of July 23, addressed to you from Mr. Byington. You have identified it as Annie Doeg Exhibit 3.

The Court: 3—C, or 3?

Mr. Stallard: C.

The Court: Yes.

By Mr. Stallard:

Q. July 23, Mr. Byington says this to you:

[fol. 249] "Circumstances unforeseen have prevented me from making the trip to Cedar Town and Birmingham this week, but in all probability, it will be convenient for me to make the trip either Friday or Saturday next week, if convenient to you."

Did you ever agree to go with him anywhere?

A. No, sir.

Q. You never agreed to go anywhere?

A. No, sir.

Mr. Stallard: That is all. I have no further questions.

Redirect examination.

By Mr. Bowles, Jr.:

Q. Mrs. Doeg, Mr. Stallard asked you whether you had the card that Mr. Lewis left with you; what did you do with that card?

A. I threw it away.

Q. You did?

A. Yes.

Q. Mr. Stallard asked you if you had talked to anybody before you testified here; you talked to me, haven't you?
[fol. 250] A. Yes, sir.

Mr. Bowles, Jr.: I just wanted to clear up that I am somebody, and I am not just nobody.

Recross examination.

By Mr. Stallard:

Q. Mrs. Doeg, may I ask you, have the representatives of the Association of American Railroads been to see you?

A. The what?

Q. Have the representatives of the American Association of Railroads been to see you?

A. I don't remember.

Q. Well, how did this gentleman ever find out about. Do you know?

A. Who are you talking about?

Q. Didn't somebody come to your place and ask you to come up here to Virginia as a witness?

A. Yes, sir.

Q. Who is that?

A. Mr. Eaton.

Q. Who is Mr. Eaton?

Mr. Bowles, Jr.: If she doesn't know, I will stipulate that he was a representative of the Association and still is— [fol. 251] of the Association of American Railroads, who, at my request, interviewed this lady to see whether she would be willing to come up here, and I found out about it first through the arrangements of the Bar Association and the proceedings in which Mr. Byington was indicted for barratry, and convicted, sir.

By Mr. Stallard:

Q. Now, who is paying your fare up here; the American Association of Railroads?

Mr. Bowles, Jr.: The State Bar of Virginia; I concede that. I sent him the checks, myself.

Mr. Stallard: I didn't ask him. I asked her.

The Court: I don't think he has been sworn, either.

By the Court:

Q. Who is paying your fare up here; who bought your ticket?

A. The State Bar of Virginia.

By Mr. Stallard:

Q. The State Bar of Virginia?

A. Yes.

Q. Sent you the money?

A. Yes.

[fol. 252] Q. To furnish your transportation up here?

A. They sent me a check.

Mr. Stallard: That is all.

Mr. Bowles, Jr.: And, if Your Honor please, she has been here a day longer than we expected her, and we have got another check to pay her for the extra day coming, her expenses.

The Court: Any further questions?

Mr. Bowles, Jr.: None to Mrs. Doeg.

The Court: I want to ask Mrs. Doeg this:

By the Court:

Q. The first letter, which you have identified, was dated Macon on June 29, 7:00 p. m. On that day, were you still in the hospital?

A. Yes.

Q. On June 29; you didn't leave the hospital until July 2, as I recall?

A. Yes, sir.

Q. I wonder if you remember the day of the week of July 2 when you left the hospital?

A. No, sir.

Q. Can you tell me the date of the birth of your child?

A. June 27.

[foi. 253] Q. What day of the week was that; do you remember?

A. No, sir, I don't.

Q. You don't know?

A. No, sir.

Q. Of course, that is easy to ascertain. I thought maybe you would have it in mind.

When you went to the hospital on June 24,—wasn't it?

A. No, I believe it was June 26.

Q. That's right. Your husband's death was June 24.

A. Yes, sir.

Q. You went in the hospital on June 26; from where did you go to the hospital, what residence? Where were you living?

A. Well, I was living at that time in Cedar Town, but after I went to the hospital and came home, I went to my Mother's house.

Q. I understand, but what I wanted to know, was where were you when you left for the hospital on June 26; where were you taken from, to the hospital?

A. Mother's house.

Q. What?

A. Mother's house.

Q. And what was that address?

[fol. 254] A. Route 1, Cedar Town.

Q. How long before that had you left the Russell Street address?

A. I believe it was a day.

Q. The same day?

A. Yes.

Mr. Bowles, Jr.: Do you have anything else, Judge?

By the Court:

Q. You are not able to recall whether or not you received this first letter from Mr. Byington before he got there; is that right?

A. Yes.

Q. You are not able to remember?

A. No, sir.

The Court: I have no further questions.

Redirect examination.

By Mr. Bowles, Jr.:

Q. I want to ask you this, Mrs. Doeg, is the Russell Street address where you and your husband were living when he was killed?

A. Yes, sir.

Q. And after he was killed, then you went to your [fol. 255] mother's?

A. Yes, sir.

Q. And from your mother's to the hospital?

A. Yes, sir.

Q. You never went back to Russell Street?

A. No, sir.

Q. Now, we are talking about dates. Can you remember whether Mr. Lewis came the day you came back from the hospital or the day afterwards?

A. I believe it was the day I came from the hospital.

Q. The day you came from the hospital?

A. Yes.

Mr. Bowles, Jr.: I have no other questions.

The Court: I have no questions.

Mr. Stallard: I would like to ask one more question.

Recross examination.

By Mr. Stallard:

Q. What was Mr. Lewis' full name?

A. Tom Lewis, Jr.

Q. Tom Lewis, Jr.? Thank you.

The Court: Thank you, Mrs. Doeg. That is all.

(Witness excused.)

[fol. 256] Mr. Bowles: Call Mrs. Mary Ann Wills.

MARY ANN WILLS was duly sworn, and testified in behalf of the plaintiff as follows:

Direct examination.

By Mr. Bowles, Jr.:

Q. You are Mrs. Mary Ann Wills?

A. Yes, sir.

Q. How old are you?

A. Nineteen.

Q. Who is your husband?

A. Harold Wills.

Q. Is he the brother of Mrs. Doeg, who just left the witness stand?

A. Yes.

Q. Where do you live now, Mrs. Wills?

A. Route 1, Cedar Town.

Q. You live with your mother, I mean your mother-in-law?

A. No, sir.

Q. Oh, you do not?

A. No.

Q. Now, where were you living at the time of your sister-in-law's husband's death?

[fol. 257] A. We were living with her, her and him.

Q. And where was that, on Russell Street?

A. Yes.

Q. In Cedar Town?

A. Yes.

Q. Now, when he was killed, where did you go to move?

A. We moved to her mother's, my mother-in-law's.

Q. How soon after his death, about, did Mrs. Doeg go to the hospital?

A. The 27th of June.

Q. When she came back from the hospital, you were all living at your mother-in-law's?

A. Yes.

Mr. Bowles, Jr.: Now, Your Honor, I make this suggestion only. This lady has been sitting in the courtroom. She has heard the other testimony. We can save time if I am permitted to ask her, does she subscribe to it, and is that correct.

The Court: Have you any objection to that method, Mr. Stallard?

Mr. Stallard: Well, I certainly want to cross-examine her.

The Court: Oh, you have that privilege.

[fol. 258] Mr. Stallard: Yes, he can do that.

By Mr. Bowles, Jr.:

Q. You have heard Mrs. Doeg and your mother-in-law testify. Were you present at some of these conversations with Mr. Lewis?

A. Yes.

Q. And Mr. Byington?

A. Yes.

Q. You have heard their testimony; is that correct, according to your recollection, what they said happened on those occasions?

A. Yes.

Mr. Bowles, Jr.: Witness ready.

Cross examination.

By Mr. Stallard:

Q. When Mrs. Queen was in the hospital, did you take her mail to her?

A. Yes, we took some of it to her.

Q. Do you remember whether you took the letter which I hand you here—it is Exhibit A—it is a letter addressed to Mrs. J. D. Queen, Russell Street, Cedar Town, Georgia, under date of June 29, and signed by Mr. B. G. Byington. I ask you if you took that letter to her?

[fol. 259] A. I don't remember.

Q. Now, did you ever hear her discuss that letter, getting a letter from Mr. Byington?

A. Yes, sir, she said she—I remember, too, that she got from him—and she told me about it.

Q. You remember, too, that she got it?

A. Yes.

Q. Did he have some papers for her to sign when he came down the first time, or were you present?

A. Yes, he had.

Q. He had some papers?

A. Yes.

Q. He got her to sign those papers and sent them to the Railroad Retirement Act, did he not?

A. No, sir, she didn't sign anything.

Q. She didn't sign any of the papers to get her retirement?

A. No, sir.

Q. You are positive she never signed any papers to get retirement?

A. Yes.

Q. She got some retirement, didn't she?

A. Yes.

Q. Will you read that letter? It says that he is coming [fol. 260] down there, and says she is entitled to retirement?

A. Well, I don't remember him saying anything about this.

Q. You don't remember him saying a thing about that?

A. No, sir.

Q. But you did carry some mail to her when she was in the hospital?

A. Yes.

Mr. Stallard: All right, that is all.

Redirect examination.

By Mr. Bowles, Jr.:

Q. I forgot to ask you one thing, do you know anything about whether or not your sister-in-law, Betty Ann, got any telephone call from Mr. Byington?

A. Yes, sir, she did.

Q. Were you present when she got it?

A. Yes.

Q. You didn't hear what, or did you hear what Mr. Byington said on the telephone?

A. No, sir.

Mr. Stallard: Well, Your Honor please, I must object to this.

[fol. 261] Mr. Bowles, Jr.: I can ask her whether she had it or not.

Mr. Stallard: I don't believe this witness would know of her own knowledge whether Mr. Byington called on the telephone.

The Court: Perhaps she does know. The question is if she did hear it.

Mr. Stallard: If you read the question, he asked if she knew that the sister-in-law got a call from Mr. Byington.

The Court: That's right, and you didn't object to that, and she said yes. The next question is whether or not she heard anything that Mr. Byington said; isn't that the order of examination?

Mr. Stallard: I respectfully submit—

The Court: Mr. Bowles?

Mr. Bowles, Jr.: Sir?

The Court: Am I right, isn't that right, the order of examination of proceeding?

Mr. Bowles, Jr.: That is correct. I was asking her whether she had heard that conversation, to see whether or not she could testify to it of her own knowledge.

The Court: The question is whether you did or did not [fol. 262] hear what Mr. Byington said.

A. No, sir, I didn't hear it.

The Court: Didn't hear it.

By Mr. Bowles, Jr.:

Q. I am not going to ask her any more, sir. Now, the other question that I wanted to ask you, and I forgot, was have you seen Mr. Lewis since this occasion?

A. Yes, we seen him in Cedar Town. I did, at the courthouse.

Q. When was that?

A. I just don't know. It's been—

Q. Been this year?

A. Yes, sir.

Q. And was it the same man that came to see you, that came to your home?

A. Yes.

Recross examination.

By Mr. Stallard:

Q. What was the occasion you saw him in Cedar Town?

A. We had to go to court on Byington.

The Court: I couldn't hear the answer there. You had to go to court on—

A. Mr. Byington.

[fol. 263] By Mr. Stallard:

Q. Now, you say Mr. Byington called your sister-in-law. She just told you that he called her, didn't she?

A. Yes.

Mr. Stallard: Your Honor, I object to her first question, and ask that it be stricken, because she said her sister-in-law told her that Mr. Byington called.

Mr. Bowles, Jr.: I understood that she knew that.

The Court: That answer will be stricken from the record, which doesn't mean anything, of course, because it stays in the record for public purpose. I mean, I just won't pay any attention to it.

Mr. Bowles, Jr.: I understand, sir. Are you through, Mr. Stallard?

Mr. Stallard: Yes, sir.

Redirect examination.

By Mr. Bowles, Jr.:

Q. Mr. Stallard asked you about Mr. Lewis being—oh, excuse me, I beg your pardon.

A. Are you still talking to me?

Q. Yes, still talking to you. —that you had gone to court about Mr. Byington. Do you know where you were at the [fol. 264] court about Mr. Byington?

Mr. Stallard: Now, Your Honor please, I certainly object to that.

Mr. Bowles, Jr.: You opened the question.

Mr. Stallard: I object to the proceeding why. The record will speak for itself, and this witness might tell a whole lot of things, and not miss them in court here. I have not opened that question at all.

The Court: You brought out on cross-examination that she had seen Mr. Lewis at a subsequent time.

Mr. Stallard: She had to go to court, and I stopped.

The Court: At the court, on Byington. I believe that is her exact language.

Mr. Stallard: She said that.

The Court: She said that?

Mr. Stallard: Yes.

The Court: Can't she tell what was going on about Byington?

Mr. Stallard: No, I don't think so. I think that would be a matter of record. I think that would not be—I think that would be a matter of record, because the witness might not know exactly the charge.

[fol. 265] The Court: She might not, and you might cross-examine her, and show she doesn't know what she is talking about, but if she does know, what kind of case that was about Byington, the objection is overruled. Now the question is?

Mr. Bowles, Jr.: I don't know whether she knows or not.

The Court: I don't know, either. She knows better whether she knows, than we do.

By Mr. Bowles, Jr.:

Q. Do you know what that was all about, you were summoned to go to court, weren't you?

A. Yes, sir, but I didn't get up and testify. I didn't even go in there.

Q. You don't know why you were summoned?

A. No, sir.

Mr. Bowles, Jr.: I have no further questions.

The Court: No further questions?

Mr. Bowles, Jr.: No, I am through.

(Witness excused.)

Mr. Bowles, Jr.: Mr. Wills, please.

[fol. 266] HAROLD WILLS was duly sworn, and testified in behalf of the plaintiff as follows:

Direct examination.

By Mr. Bowles, Jr.:

Q. You are Mr. Harold Wills?

A. Yes, sir.

Q. How old are you, sir?

A. Twenty-five.

Q. Where do you live?

A. Route 1, Cedar Town.

Q. Are you Betty Ann Doeg's brother?

A. Yes, sir.

Q. And Mrs. Wills, who has testified here before, is your mother?

A. Yes, sir.

Q. And the lady who has just testified, and left the witness stand, is your wife?

A. Yes, sir.

Q. Now, where were you living on June 24, 1959?

A. I was living on Russell Street with my brother-in-law and my sister, and my wife.

Q. And your brother-in-law was J. D. Queen?

A. Yes, sir.

Q. Was he killed on June 24, 1959?

[fol. 267] A. Yes, sir.

Q. Who did he work for?

A. Central Georgia Railroad.

Q. Was he a member of any organization connected with that?

A. Well, I don't know. I never discussed his business with him.

Q. Now, again, Your Honor—well, I will ask this one more question. Were you present at your mother's home when, as it has been testified to, Mr. Lewis came?

A. Yes sir, I was out in the yard mowing the grass, and he drove up, and he introduced himself to me. He wanted to know where my sister was, so I carried him into the the house, and introduced him to my mother and my sister and my wife. We was all in the house there, my wife and sister and baby.

Q. How did he introduce himself to you?

A. As Tom Lewis, Jr., lawyer from Atlanta. He wanted to talk to my sister.

Q. Did he say whether or not he was connected with any particular organization?

A. Well, now, no, sir, he didn't say it to me.

Mr. Bowles, Jr.: Now, I suggest, Your Honor, the same procedure, if it is agreeable with Mr. Stallard with regard to these three witnesses testifying.

[fol. 268] The Court: You may ask your question, and we will see if Mr. Stallard objects.

By Mr. Bowles, Jr.:

Q. You have heard your mother testify, your sister, Betty Ann, and your wife testify. Do you subscribe fully to what they have said?

A. Well, now, I was not at home all the times that most of them came. I was there when Mr. Lewis come, and I was there a few minutes when Mr. Byington come the second time.

Q. And were you not there on Mr. Byington's first visit?

A. No, sir.

Q. Or his last visit?

A. No, sir.

Q. Otherwise, you subscribe to their testimony?

A. Yes, sir.

Mr. Bowles, Jr.: Witness ready. One more question I forgot. Well, never mind, sir. Just go ahead. I had a note, and I lost it.

The Court: Cross examination?

[fol. 269] Cross examination.

By Mr. Stallard:

Q. Who asked you to come up to Richmond to testify in this case?

A. Mr. Bill Eaton.

Q. Mr. Bill Eaton?

A. Yes, sir.

The Court: How do you spell that, Mr. Stallard?

By Mr. Stallard:

Q. Do you know how to spell it? Do you know how to spell his name?

A. E-d-e-n-s.

The Court: Mr. Edens?

A. Eden—E-d-e-n-s?

The Court: E-d-e-n-s?

By Mr. Stallard:

Q. Is he a representative of the Association of American Railroads?

A. Yes. He told me he was.

Q. He told you he was?

A. Yes, sir.

Q. Do you know what job he has with the Association of American Railroads?

A. No, sir, I would be afraid to say about that.

[fol. 270] Mr. Stallard: Thank you. That will be all.

A. All right, sir.

Redirect examination

By Mr. Bowles, Jr.:

Q. The thing I forgot to ask you, sir, is any occasion when Mr. Byington was there, did you request Mr. Byington to leave?

A. Well, no, sir. He was there, I was working and driving a truck, and I went by the house, and I seen this car stop, so I stopped to see what it was all about, and he was in there talking to my sister, and I just went in the kitchen and got me a drink of water, and come back through, and stopped a few minutes, and he was showing us some paper clippings and some photostatic copies of some checks, cancelled checks, and wanted her to go to Birmingham to court. So, of course, that didn't figure in my business, so I just got to my chores and I left.

Q. You left?

A. Yes, sir.

Mr. Bowles, Jr.: I see. That is all.

Mr. Stallard: No questions.

The Court: That is all.

Mr. Bowles, Jr.: That is all. Thank you.

(Witness excused.)

[fol. 271] Mr. Bowles, Jr.: May these witnesses be excused, sir? They are very anxious to get back to Cedar Town.

The Court: Yes. How many are there? There are six? We have had four testify, but there are some that are accompanying them.

Mr. Bowles, Jr.: Mrs. Doeg's husband is there.

The Court: There are five, all together, or six?

Mr. Bowles, Jr.: He is not going to testify. He knows nothing about it.

The Court: This is all of the Georgia group?

Mr. Bowles, Jr.: That is correct, then.

The Court: Are you willing to excuse them?

Mr. Stallard: Yes, certainly.

The Court: All the witnesses testified, and their companions from Georgia will be excused from further attendance in court.

MOTION TO STRIKE AND OVERRULING THEREOF

Mr. Stallard: Your Honor, I would like to make a motion to strike this evidence on the ground that it has not been shown that Mr. Byington called upon the witnesses, representing my client, the Brotherhood. The letters indicate that he was general chairman of a local lodge, and I respectfully submit that a general chairman [fol. 272] of a local lodge is not an employee or a representative of the International, because the local lodge is nothing but a subordinate lodge, and at no time are they employees or representatives. Now, if he were calling upon this lady as an employee or representative of the International, but she specifically said that her husband didn't have any insurance, and therefore, he couldn't have been calling on her as a representative of the Brotherhood. I object further to the evidence, and move it be stricken out on the ground that it is a matter that happened in Georgia, and the case here is specifically asking the Court to enjoin my client from practicing law in Virginia.

The Court: I may be wrong in my recollection, but the plaintiff is going to show that the attorney in Birmingham, Mr. A. L. Rives, is one of these regional counsel.

Mr. Bowles, III: That's right.

Mr. Bowles, Jr.: We will do that in just a minute.

The Court: I understand that. That was my understanding. In view of that, I think that the objection is not well founded, and it is overruled, and the testimony will stand.

Mr. Stallard: I would like the record to show that—
[fol. 273] The Court: Yes, exceptions, of course, noted.
Now, we will take a recess. Now, please, until four o'clock.

(Recess.)

INTRODUCTION OF BYINGTON EXHIBIT A, AND PLAINTIFF'S
EXHIBITS 67 THRU 81 WITH COMMENTS OF BOTH PARTIES

Mr. Bowles, III: I would like to introduce as our next exhibit, Your Honor, the case of the State of Georgia against B. G. Byington, consisting of a True Bill, returned by the grand jury; the report of the evidence; the charge to the jury; and the conviction order. I would like this to be marked as Byington Exhibit A, if I may, sir.

Mr. Stallard: May I see the exhibit, Your Honor?

The Court: Yes, sir.

Mr. Stallard: If Your Honor please, I object to the introduction of these papers on the ground that this apparently is an indictment in the Superior Court of Georgia of a man by the name of B. G. Byington. He is charged with "Seek out and proposed to another person, to wit: Mrs. Betty Ann Queen, that she present and urge a suit in court for the death of her husband, Jimmie D. Queen against Central Georgia Railroad Company." I respectfully submit that nowhere has it been shown that Byington, when he did this, if he did it, was acting as an employee or agent of [fol. 274] the defendant Brotherhood in this case. It has been pointed out, but not in this record, that Byington tried to get Mrs. Betty Ann Queen to go to see a lawyer, Rives, in Birmingham; and, further, it has been stated that Rives was one of the regional counsel, but I respectfully submit that that would be stretching the law of agency, to say that by that imagination, he also became an agent of the Brotherhood of Railroad Trainmen.

Mr. Bowles, III: If Your Honor please, I think in the report of the evidence on page 29, Mr. Byington was asked, "By whom are you employed?" And he said, "By the Brotherhood of Railroad Trainmen."

Then he goes on to describe what his job is as general chairman of the Central Georgia Railway.

Mr. Stallard: I would like to respectfully tell Your Honor that that is a Brotherhood Railroad Trainmen locally, a lodge, which is affiliated with the Grand Lodge, but it really is only an affiliation by charter.

Mr. Bowles, Jr.: May I add to it, if Your Honor please, that Mr. Kennedy, in his deposition on June 1, said that Mr. Byington carried the same kind of card that Mr. Verbon and all the rest of the investigators did.

The Court: Any comment on that?

Mr. Stallard: No, sir, Your Honor, the only thing that I could say that the Brotherhood, the defendant, now, [fol. 275] and it has been testified to by Mr. Kennedy, will be testified to further here, that they have no investigators today, and it hasn't been proven that this man was one of our investigators.

Mr. Bowles, III: They have 1961 cards, though, Mr. Stallard.

Mr. Bowles, Jr.: And not only that, sir—

Mr. Bowles, III: And 1960 cards.

Mr. Bowles, Jr.: Your Honor will recall that the magic date is April 1, and Mr. Nelson this morning pointed out in one of these exhibits, that they were paying the salary of Mr. Clinkenbeard as lately as August of 1959, as a regional investigator of the Brotherhood.

The Court: Whose salary was paid?

Mr. Bowles, Jr.: Mr. Clinkenbeard's.

The Court: I can't catch the name.

Mr. Bowles, Jr.: Clinkenbeard, he was the one that was involved in the Lush firm, the same way that Mr. Tingle is for Mr. Savage, and they were paying his salary after the magic date. Their own records show that, from this morning.

The Court: Do you have anything further to say?

Mr. Stallard: Yes, sir, Mr. Clinkenbeard, I am informed, was on the payroll of the Railroad Brotherhood for certain [fol. 276] specific purposes, so that he would get his retirement at a certain age. That has no connection with Mr. Byington down in Georgia. I understand that he is employed, an employee of some railroad down there, and is

chairman, and I don't know that he is employed as an employee, paid employee, he certainly is an employee for the local Brotherhood there, and that would, in no way, by the stretch of imagination, say he would be on our payroll. That is guilt by analogy, it looks like to me.

Mr. Bowles, Jr.: Well, Your Honor, if we have got to go into this a little deeper, let's look at the actual facts.

The Court: Mr. Bowles, I am going to overrule the objection, and I am going to receive this in evidence as Plaintiff's Exhibit No. so-and-so, and I don't want to interrupt your statement, if you wish to make it further, for the record.

Mr. Bowles, Jr.: I just wanted to show you that Mr. Kennedy, President Kennedy, said that he was classed as an investigator.

The Court: I am perfectly satisfied that the connection has been sufficiently established, to make this admissible.

Mr. Bowles, Jr.: That's right, I have nothing further to [fol. 277] say.

(Byington Exhibit No. A, a record, was marked and received in evidence.)

Mr. Stallard: I would like the record to show that I except for the reasons stated.

Mr. Bowles, Jr.: Your Honor, it had been my intention at four o'clock to call Mr. Chase. I don't know whether he has been anxious to go away. It has been about ten or fifteen minutes we have spent here. I understand he is anxious to leave.

The Court: Where is your home, Mr. Chase?

Mr. Chase: Cleveland, Your Honor.

The Court: I can't go on after five o'clock.

Mr. Bowles, Jr.: I understand that, sir, but I am trying to accommodate Mr. Chase, but I do not want to interrupt my examination of him. I would prefer, Your Honor,—I am sorry I can't accommodate him, it now being 4:20, and I would prefer to go on with the presentation of these exhibits and take Mr. Chase tomorrow.

The Court: How long do you think the examination of Mr. Chase would take?

Mr. Bowles, Jr.: That depends entirely on what he has brought with him, sir, in response to the subpoena duces tecum, to bring all of the records.

(Discussion off the record.)

[fol. 278] Mr. Bowles, Jr.: Well, I understand, sir, that by the statement of Mr. Chase that he has not brought the financial records, that he has brought copies of them. I didn't ask for those under the subpoena, and I want the records.

The Court: I don't think we can go into that now.

Mr. Bowles, Jr.: I don't think so, either, but we want to know when you can get them here, Mr. Chase?

The Court: Proceed with the exhibits.

Mr. Bowles, III: I would like to introduce, Your Honor, a list of cases in Virginia, handled by the regional counsel, as heretofore filed by the defendant, as Exhibit 3-D in response to the first call, and I believe that should be Exhibit 67, Plaintiff's Exhibit 67.

The Court: Plaintiff's Exhibit 67 received and filed, identified, received and filed.

(Plaintiff's Exhibit No. 67, consisting of a list of cases, was marked and received in evidence.)

Mr. Bowles, III: The next one is the letter of October 12, 1949, to Tom Lewis, regional counsel in Atlanta, Georgia, from W. P. Kennedy, terminating him as regional counsel, and this was heretofore filed as Exhibit 5-B in [fol. 279] response to the second call of production of documents, and that should be 68, I believe.

Mr. Stallard: These are just records we have given you.

Mr. Bowles, III: That's right.

Mr. Stallard: They are perfectly permissible under the statutes.

The Court: Plaintiff's Exhibit 68 is identified and filed.

(Plaintiff's Exhibit No. 68, being a letter, was marked and received in evidence.)

Mr. Bowles, III: Next, Your Honor, is a letter of October 12, 1949, to W. P. Kennedy from Tom Lewis, accept-

ing termination heretofore filed by defendant as Exhibit 5-B. This was filed in response to the further call for production of documents as Exhibit 5-B.

The Court: Plaintiff's Exhibit No. 69, identified and filed.

(Plaintiff's Exhibit No. 69, a letter, was marked and received in evidence.)

Mr. Bowles, III: The next is a letter of October 12, 1949, to Tom Lewis from W. P. Kennedy, appointing him [fol. 280] regional counsel with the same territory, heretofore filed by the defendant as Exhibit 5-C, in response to the second call for production of documents and that should be Exhibit 70, I believe, Your Honor.

The Court: Plaintiff Exhibit No. 70, identified and filed.

(Plaintiff's Exhibit No. 70, a letter, was marked and received in evidence.)

Mr. Bowles, III: The next is a letter also dated October 12, 1949.

The Court: October 14, 1949.

Mr. Bowles, III: Excuse me, sir. —to W. P. Kennedy from Tom Lewis, regional counsel, in Atlanta, Georgia, accepting the appointment, and this was heretofore filed by the defendant as Exhibit 5-C, in response to the second call of production of documents, and I believe that should be Plaintiff's Exhibit No. 71.

The Court: Plaintiff Exhibit 71, identified and filed.

(Plaintiff's Exhibit No. 71, a letter, was marked and received in evidence.)

Mr. Bowles, III: The next, Your Honor, is a list of [fol. 281] various articles that have appeared in the publications of the Brotherhood of Railroad Trainmen, with reference to the Legal Aid Department, various regional counsels, and the cases handled by them, and this was heretofore filed by the defendant as Exhibit 4-C, in response to the second further call. That would be Exhibit 72.

The Court: This is Plaintiff Exhibit No. 72, identified and filed.

(Plaintiff's Exhibit No. 72, a list, was marked and received in evidence.)

Mr. Bowles, III: The next, Your Honor, is a page from the October, 1958 Directory, listing regional counsel, and was heretofore filed by the defendants as Exhibit 5 in response to the second further call. That should be Exhibit 73, I believe, Your Honor.

The Court: Plaintiff Exhibit No. 73, identified and filed.

(Plaintiff's Exhibit No. 73, a Directory, was marked and received in evidence.)

Mr. Bowles, III: The next is a page from the January, 1959 Directory, listing regional counsel, heretofore filed by the defendant as Exhibit 5 in response to the second further call. I would like to have that marked as 73-A, if I may, Your Honor.

The Court: Plaintiff Exhibit 73-A, identified and filed.

(Plaintiff's Exhibit No. 73-A, a page of Directory, was marked and received in evidence.)

Mr. Bowles, III: Next is a photostatic copy of the January '60 Directory. I would like that marked 73-B, if I may, Your Honor.

The Court: Plaintiff Exhibit 73-B is received and filed.

(Plaintiff's Exhibit No. 73-B, a copy of a Directory, was marked and received in evidence.)

Mr. Bowles, III: The next is the October, 1960, Directory. I would like that marked as Exhibit 74.

The Court: Plaintiff's Exhibit 74 is identified and filed.

(Plaintiff's Exhibit No. 74, a Directory, was marked and received in evidence.)

Mr. Bowles, III: As Plaintiff's Exhibit 74-A, the January 1961 Directory.

[fol. 283] The Court: Plaintiff's Exhibit No. 74-A is identified and filed.

(Plaintiff's Exhibit No. 74-A, a Directory, was marked and received in evidence.)

Mr. Bowles, III: As Exhibit 74-B, Your Honor, the April, 1961 Directory.

The Court: Plaintiff's Exhibit 74-B, identified and filed.

(Plaintiff's Exhibit No. 74-B, a Directory, was marked and filed in evidence.)

Mr. Bowles, III: As Exhibit 74-C, Your Honor, the July, 1961 Directory.

The Court: Plaintiff's Exhibit 74-C, identified and filed.

(Plaintiff's Exhibit No. 74-C, a Directory, was identified and filed in evidence.)

Mr. Bowles, Jr.: If Your Honor please, in the testimony of Mr. Kennedy, the president, taken June 1, in Cleveland, of this year, it appears that I requested the Directories for 1961, and I hand to the Court and request that this be identified, a letter of October 23, 1961, from C. R. Maher, [fol. 284] chief clerk, Department of Legal Counsel, a letter to me and a copy sent to Mr. Stallard, showing the source of the last three exhibits. I suggest you mark that 74-D, sir.

The Court: Plaintiff's Exhibit 74-D, identified and filed.

(Plaintiff's Exhibit No. 74-D, a letter, was marked and received in evidence.)

Mr. Bowles, III: I would like next to offer a letter of March 16, 1959, to all regional counsel from W. P. Kennedy, advising them to comply with the Illinois decision of April 1,—by April 1, 1959, heretofore filed by the defendant as Exhibit 3-A, in response to the first call for production of documents, and I would like that marked Plaintiff's exhibit 75, if Your Honor please.

The Court: Plaintiff's Exhibit 75, identified and filed.

(Plaintiff's Exhibit No. 75, a letter, was identified and filed in evidence.)

Mr. Bowles, III: As Plaintiff's Exhibit No. 76, the letter of March 17, 1959, from B. M. Savage, to W. P. Kennedy, acknowledging receipt of the Kennedy letter of [fol. 285] March 16, 1959, which is our Exhibit 75, in response to the second further call for production of documents.

The Court: Plaintiff's Exhibit 76 is received and filed.

(Plaintiff's Exhibit No. 76, a letter, was marked and received in evidence.)

Mr. Bowles, Jr.: That was previously filed as Exhibit 4-J, I believe.

The Court: 4-J, second further call for the production of documents?

Mr. Bowles, III: I would like to next offer in evidence the deposition of W. P. Kennedy, president of the Brotherhood, taken in the case of *Southern Pacific Company against Clifton Hildebrand*, et al., in the Superior Court of the State of California, Los Angeles County. I would like that marked as Exhibit No. 77.

The Court: Plaintiff's Exhibit 77 identified and filed.

(Plaintiff's Exhibit No. 77, a deposition, was marked and received in evidence.)

Mr. Bowles, III: I would like to next offer the deposition of J. R. Maher, chief clerk of the Legal Aid Department, [fol. 286] and now of the Department of Legal Counsel, taken in the case of the *Southern Pacific Company against Clifton Hildebrand*, et al., in the Superior Court of the State of California, Los Angeles County, as Exhibit 78.

The Court: Plaintiff's Exhibit No. 78.

(Plaintiff's Exhibit No. 78, a deposition, was marked and received in evidence.)

Mr. Stallard: I would like the record to show that I object to that, because it is a deposition taken in another case, and I don't know what is in it, or whether it would be admissible in this court, and I would like the record to show that I object to it.

The Court: Objection overruled. Exception noted in the record. I understand that this was the deposition of Mr. Maher, who, I believe, is the secretary of the Brotherhood.

Mr. Bowles, III: I would next like to introduce part of the record in the case of *Burnett against Southern Railway Company*, filed June 31, 1958, in the Circuit Court of Jefferson County, Alabama; all the copies being attached

together, consisting of the complaint, the amendment to the complaint, the amendment to the complaint as the last amendment, the answer to interrogatories, further answer [fol. 287] to interrogatories, and answer to supplemental interrogatories, as Exhibit 79.

The Court: Plaintiff's Exhibit 79 is identified and filed in evidence.

(Plaintiff's Exhibit No. 79, a partial record, was marked and received in evidence.)

Mr. Bowles, III: I would next like to offer the case of *Shoaf against Southern Railway*, filed March 10, 1961, in the Circuit Court of the Tenth Judicial Circuit Court of Alabama, the copies being all attached together, consisting of the complaint, the certificate of dismissal without prejudice on the motion of the plaintiff, dated June 23, 1961, as Exhibit 80, if Your Honor please.

The Court: Plaintiff's Exhibit No. 80 identified and filed.

(Plaintiff's Exhibit No. 80, the case of *Shoaf against Southern Railway*, was marked and received in evidence.)

Mr. Bowles, III: I would like to next offer the case of *Shoaf against Southern Railway Company, et al.*, filed July 13, 1961, United States District Court for the Eastern District of Virginia, Richmond Division, Civil Action No. 3313 now pending, consisting of complaint, as Exhibit 81.

[fol. 288] The Court: Plaintiff's Exhibit 81, identified and filed.

(Plaintiff's Exhibit No. 81, *Shoaf against Southern Railway Company*, was marked and received in evidence.)

Mr. Bowles, Jr.: Now, if Your Honor please, the complainant offers in evidence the following depositions which have been duly taken and filed in the Clerk's office.

The Court: You mean depositions taken in this case?

Mr. Bowles, Jr.: Yes, sir.

The Court: They are already part of the record.

Mr. Bowles, Jr.: All right, sir? May I enumerate them in the record, just for the purpose of saying which they are?

The Court: I never heard of it being ~~done~~, but you have permission.

Mr. Bowles, Jr.: We have been sort of using this as an index. It is the deposition of W. P. Kennedy, president of the Brotherhood, taken June 1, in Cleveland; deposition of Dewey C. McLaughlin, taken June 1, '61, in Cleveland; deposition of Clifford D. Olson and Mrs. Betté Olson, his wife, taken on June 15, 1961, in Rapid City, South [fol. 289] Dakota; deposition of Paul A. Hodges, taken on June 22 in Fairfield, Illinois; deposition of Charles William Clark, Jr., taken June 29, '61, in Philadelphia; deposition of Kenneth H. Gibson, taken on July 6, '61 in Clinton, Iowa; deposition of Gloria Ann Lomen, taken on July 6, in San Francisco, California; deposition of Elmo S. Lomen, taken July 6, 1961, in San Francisco, California; deposition of Virginia Lee Troxtell, taken July 13, in Indianapolis, Indiana; deposition of Edward Lawrence Troxtell, taken July 13, 1961, in Indianapolis, Indiana; deposition of James Garwood, taken July 28 in Hornell, New York.

Now, Your Honor, subject to a check, it is my considered opinion at this time, that with the exception of the testimony of Mr. Chase, whom we wish to call as an adverse witness, I believe that that is the complainant's case.

Mr. Stallard: Your Honor, to make the record clear, I want to make my motion to strike certain exhibits in the depositions, which have just been mentioned. If I could, I have furnished a copy of my motion to counsel for the plaintiff, and I would enter those motions now, because they refer to exhibits in President Kennedy's deposition.

The Court: Do you wish to be heard on those?

Mr. Stallard: Yes, sir, at this time.

[fol. 290] The Court: Well, I don't know about this time. You can be heard.

Mr. Stallard: Well, I am just passing up my motion, written motion.

The Court: I will hear you at such length as you wish. There are quite a number of them. I will take them one at a time, and I will hear all you have got to say about them, but not now. I will afford you the opportunity before the case is over.

Mr. Stallard: All right.

Mr. Bowles, Jr.: If Your Honor please, if I may draw the Court's attention to Exhibit 79, 80, and 81, Exhibits 79, the case of Beatrice B. Burnett, administrator, who sues Southern Railroad in behalf of her deceased husband, that is a case, as the pleadings show, of a Virginia accident, in which counsel appears, A. L. Rives, for the plaintiff. We have shown who Mr. A. L. Rives is, an attorney in Birmingham, Alabama, and that case was brought in the Jefferson County, Alabama Court.

Mr. Stallard: What exhibit is that? May I ask?

Mr. Bowles, Jr.: What good is it?

Mr. Stallard: What exhibit is it?

Mr. Bowles, Jr.: It is Exhibit 79. Exhibit 80 is the case of a resident of the State of Virginia, who was in- [fol. 291] jured at Blairs, Virginia, and who instituted suit in the same court in Alabama, with Mr. Lewis; Lewis, Lewis, Whaley & Cagle, of Atlanta, Georgia, as counsel, and also, Higgins, Windham, Perdue & Johnson, of Alabama, in the Alabama court. That case was dismissed, and Mr. Shoaf, *Roy P. Shoaf, against Southern Railway Company*, and Exhibit 81 shows that that case was rebrought in the Eastern District of Virginia. Shoaf against Southern Railway, and Searce; and counsel appearing on that complaint, Wilbur Allen of Allen, Allen, Allen & Allen, of Richmond, and the Tom J. Lewis, Jr., of the firm of Lewis, Lewis, Whaley & Cagle, of Atlanta, Georgia.

My son calls to my attention the fact that in the Burnett case, I may have said that the deceased was a resident of Virginia. The accident was in Virginia. He was a resident of North Carolina, just over the line at Danville.

The Court: Below Danville?

Mr. Bowles, Jr.: Just south.

The Court: South of Danville?

Mr. Bowles, Jr.: Just south of Danville. Now, I repeat, that is our case in chief, except for Mr. Chase.

The Court: Have you time for your motion before adjournment?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Bowles, Jr.: I am ready to make it, sir, and in view of all the circumstances, I am perfectly agreeable to go [fol. 292] over to Thursday morning, if that is agreeable with counsel. I had said to Mr. Chase before, that in the early presentation of this case, that I would try to accommodate him to get away. We have been through that, sir.

The Court: Now, Mr. Stallard, I would like to hear from you about the motion that is made that we adjourn until Thursday morning at ten-thirty. I have a small matter at ten o'clock. What do you have to say about that?

Mr. Stallard: I do not oppose it, Your Honor. I have set aside the time this week.

The Court: So have I.

Mr. Stallard: And I do not oppose it.

Mr. Bowles, Jr.: Well, Your Honor, doesn't understand me to make a motion to continue it until Thursday. Off the record, we discussed the advisability of that, and I said that I was willing to do it.

The Court: What is your preference? I would like for you to express your motion, giving me your preference of when you want to reconvene.

Mr. Bowles, Jr.: Well, sir, I am in this difficulty. I would like as promptly as possible, to be able to examine Mr. Chase with the records that I requested him to bring by subpoena from this Court. The idea that I had in mind outside of the idea that I think was in the Court's mind, [fol. 293] was that maybe that would give him some time to get the records I requested, if he can do so, or will do so.

Mr. Stallard: That is the reason, Your Honor, I mentioned that if we took up that matter thirty minutes ago, it might be determined by Your Honor, that Mr. Chase couldn't deliver what counsel thinks he can deliver.

The Court: He says he is not under oath here, but he is going to make the statement under oath that he can't get them, is what he said.

Mr. Stallard: They are not under his direction; they are under the constitution, and I think that that can be very well ascertained by reading the constitution, but he

has what has come from that to him. He has it not as counsel would want it, but he has the summary of it.

The Court: Let me summarize the situation, Gentlemen.

Mr. Bowles, Jr.: May I say this to the Court before you do that?

The Court: Yes.

Mr. Bowles, Jr.: May I make it very plain what I want to find? You heard Mr. Nelson testify this morning that when he was at the Brotherhood's office in Cleveland that he got certain records showing what happened in the firm of Davis, Berat, Yeager & Lush, and he said that the same [fol. 294] kind of records were there in the possession of the Brotherhood at that time, for all the other regional counsel. Now, I want the ones about Mr. Savage to be brought into this court, and that is what I asked in the subpoena, and that is what I want him to produce.

The Court: I cannot take that up now. I am going to take up this question. It is more far-reaching. That can be handled at a later hour, five minutes before adjournment.

(Discussion off record.)

The Court: Now, Mr. Bowles, I summarize it this way: Except for the routine matters, and a few short matters, I have to interrupt this case. I have devoted my time to this case, and I propose to do it now. Now, in this situation, you cannot be here tomorrow morning?

Mr. Bowles, Jr.: No sir, I cannot.

The Court: You cannot, because you appear for another case. The Court will recognize that, and I want you now, sir, without any consideration, any suggestion I may have made off the record, to express your preference and a time to which the Court will adjourn. You will be in the Supreme Court of Appeals tomorrow morning. What time do you wish this court to adjourn to?

Mr. Bowles, Jr.: Well, Your Honor, that places me in somewhat of an embarrassment, in light of some of the [fol. 295] things that have been said off the record between counsel and the Court.

The Court: Don't pay any attention to what I have said. I was making suggestions that I thought would be considered. When do you want me to adjourn to?

Mr. Bowles, Jr.: I suggest that we go back to work at two o'clock tomorrow.

The Court: Is that agreeable, Mr. Stallard?

Mr. Stallard: Yes, sir.

The Court: This case then, will go over until two o'clock tomorrow.

Court is recessed.

(Whereupon, an adjournment was taken to tomorrow, at 2:00 p. m.)

[fol. 296]

October 11, 1961

Met pursuant to adjournment on yesterday, at 2:00 p. m.

The Court: Good afternoon, Gentlemen. I am ready when you are, Mr. Bowles.

Mr. Bowles, Jr.: Would you call Mr. Chase?

The Court: Mr. Chase, would you come up to the witness chair?

WILLIAM B. CHASE was duly sworn, and testified as follows:

Direct examination.

By Mr. Bowles, Jr.:

Q. Would you state your full name, age, and residence, please?

A. My name is William E. B. Chase, I am fifty-eight years old next month, and I live in Lakewood, Ohio.

Q. Mr. Chase, are you the secretary-treasurer of the Grand Lodge of the Brotherhood of Railroad Trainmen?

A. My title is the general secretary and treasurer of the Grand Lodge.

The Court: General secretary and—?

[fol. 297] A. General secretary and treasurer, Your Honor.

By Mr. Bowles, Jr.:

Q. You are here, sir, in response to a subpoena I believe, served on you to attend and served in person, while you were at Richmond, by the Sheriff on July 22, 1961?

A. Yes, sir.

Q. For the sake of the record, either refer to it, sir, or file it.

The Court: May I see the order?

Mr. Bowles, Jr.: This is not the subpoena duces tecum.

The Court: Oh, it is not?

Mr. Bowles, Jr.: No, sir.

The Court: I don't believe I entered the order. I think another judge entered that, in my absence.

Mr. Bowles, III: Judge Huntley.

The Court: Judge Huntley? I know I hadn't seen it.

INTRODUCTION OF PLAINTIFF'S CHASE EXHIBITS NO. A
AND B WITH COMMENTS OF BOTH PARTIES

By Mr. Bowles, Jr.:

Q. Would you file this, please, sir, as an exhibit with your testimony? I suggest we mark it Chase No. 1.

The Court: Are you going to make that part of the [fol. 298] record?

Mr. Bowles, Jr.: I am not sure.

The Court: I am not familiar with those rules.

Mr. Bowles, Jr.: We might as well make it a part of the record.

The Court: Chase A, marked and identified, Exhibit Chase A, identified and filed.

(Chase Exhibit No. A, a subpoena, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Mr. Chase, at the same time on July 22, 1961, when you were in Richmond, did you receive from the Sheriff of the City of Richmond what we call a subpoena duces tecum, which reads as follows:

"Commonwealth of Virginia, to the Sheriff of the City of Richmond: We command you that you summon William E. B. Chase to produce or make available for inspection, certain records, to wit: All financial records of the defendant, Brotherhood of Railroad Trainmen, relating to the Legal Aid Department, and the Department of Legal Counsel, and all audits thereof before our said Court at the courtroom thereof on the 9th day of October, 1961, at ten o'clock [fol. 299] a.m., and then and there to testify and the truth to say in a certain matter of controversy in our said court now pending and undetermined, in the Commonwealth of Virginia ex rel Virginia State Bar as plaintiff, the Brotherhood of Railroad Trainmen, et al as defendants, and have then therewith this writ and make return how you have executed the same."

Did you have that served upon you, sir?

A. Yes, sir, I did.

Q. Would you file that, please, as Exhibit Chase B?

A. If that is what you read, it is the same as I have.

The Court: This is the subpoena that was issued pursuant to the order, the first one you entered?

Mr. Bowles, Jr.: That is correct, sir. I expect to draw that to your attention next.

The Court: You are not going to file that as an exhibit, are you?

Mr. Bowles, Jr.: No, sir.

The Court: Go ahead, sir. Chase Exhibit identified and filed, Chase Exhibit B.

[fol. 300] (Chase Exhibit No. B, a subpoena, was marked and received in evidence.)

Mr. Bowles, Jr.: If Your Honor please, I bring to the attention of the Court at this time the order of the Court entered on October 21, which was the authority for the issuance by the Clerk of this subpoena duces tecum just introduced as Chase Exhibit B, to which is attached and filed the affidavit therefor, and which is already a part of the record.

The Court: July 21?

Mr. Bowles, Jr.: That's right, it was served the next day, sir.

The Court: I understand. July 21 was a Friday.

Mr. Bowles, Jr.: Mr. Chase, you have the copy of the subpoena duces tecum—I thought I noticed you comparing it while I read it?

A. Yes, sir, I have, and I just read it while you were reading yours.

Q. Do you have with you the papers that I requested?

A. Well, Counsel, I don't know what papers you want. In other words, I have with me the copies of our audit that [fol. 301] were available from 1954 to date. For the benefit of the Court, Your Honor, I don't have any jurisdiction whatsoever over the Legal Aid Department or the Department of Legal Counsel, as it is now called. The audit that we make—and I have a copy of the certified Ernst and Ernst auditors, last year, 1960—just takes the Legal Aid Department as a whole; and I understand, and didn't know until I reached this Court, that there was any subdivision or any other audit of books. All we have is a lump sum amount of monies that went into the Legal Aid Department, and we can show you the monies that were collected by them, that were turned over to my department during those years; the expenditures; and we can show you today that that same department is \$85,000 in the red in our set of books.

As to the advisability of bringing all of those ledgers, I don't know whether that would be feasibly possible or not, but we want to cooperate in every way possible with the Court, but it is just a matter over which I know nothing about. I don't have any jurisdiction over the Legal Aid Department or the Department of Legal Counsel, and I can read to you from the constitution that will show you that the request, evidently made by counsel, isn't within my jurisdiction.

Mr. Bowles, Jr.: Well, before we get to all of that [fol. 302] explanation, sir, would you answer these questions for me? The subpoena reads as follows:

"That you produce or make available for inspection certain records, to wit: All financial records of the defendant Brotherhood of Railroad Trainmen relating to the Legal Aid Department and the Department of Legal Counsel."

Now, did you bring with you, or have you made available for our inspection, all of the financial records of the Brotherhood of Railroad Trainmen relating to the Legal Aid Department and the Department of Legal Counsel?

A. I have for the periods that were available.

Q. Have you got the original records of the Brotherhood of Railroad Trainmen relating to all of the financial transactions of the Legal Aid Department and the Department of Legal Counsel?

A. No. I just told the Honorable Judge—

Q. I want to get it straight, now why you didn't do it, but you haven't got them, have you?

A. I don't have any authority—

Q. I didn't ask you that. You have not got them, period?

A. You are asking me to do something I can't do.

Q. I didn't ask you that. Did you or did you not bring [fol. 303] them—period?

A. I brought a copy of the records to date that we have available, yes, sir.

Q. Did you bring the originals—period? Will you say yes or no?

A. I didn't bring the originals.

Q. Now, did you bring the original audits of those records made by your auditors? Now, answer that yes or no, sir, because I am going to ask you about your reasons for it later.

A. Outside of one which is the original audit by Ernst and Ernst, I brought copies of our ledgers which can be certified or notarized or sworn to or anything as being legitimate.

Q. You have not brought with you here the things that are specified on the paper that was served on you, have you? Now, whatever your reason may be for not doing it, you haven't done that?

A. Well, you are asking me to do something impossible.

Q. I didn't say that, sir. But you haven't done that?

A. I haven't been able to.

Q. The answer is "no"?

[fol. 304] A. I haven't been able to, no. That's right.

Q. Now, let me ask you this. I point out to you in the constitution of the Brotherhood of Railroad Trainmen, which is Exhibit 1-A and 1-B, whichever one you choose to look at. In Section 9 at page 10 of the copy that was furnished by the Defendant as Defendant's Exhibit No. 2 in answer to the second further call for production of documents, and is now marked as Exhibit 1-A in this proceeding, the following, which I read:

"Duties of the President.

"It shall be the duty of the President to devote his whole time to the interests of the Brotherhood; he shall preside at all sessions of the Grand Lodge, and shall perform its executive duties when the same is not in session, and he shall exercise a general supervision over the affairs of the Brotherhood. He shall have authority to call a special session of the Grand Lodge at any time, or upon request of a majority of all lodges as provided in Section 24. If occasion requires, he shall have power to appoint deputy grand lodge officers to represent the Brotherhood.

"He shall be empowered to adjust all grievances referred to him in conformity with the general rules; he shall interpret all laws pertaining to the Brotherhood, and shall decide all controversies and appeals referred to him by subordinate lodges or members thereof.

"Such decisions shall be final unless reversed by the Board of Directors or Board of Appeals at their first meeting after such decisions have been rendered, and when such decisions have been rendered, it shall be the duty of the president to use all the authority and power vested in him to have the decisions placed in effect; he shall grant and sign all charters and dispensations emanating from the Brotherhood, and shall be jointly responsible with the general secretary and treasurer for the disbursement of all funds from the treasury of the Brotherhood."

Now, that last sentence I read to you, that general secretary and treasurer; that is you, isn't it?

A. That's correct.

Q. And you and the president are jointly responsible for the disbursement of all funds from the treasury of the Brotherhood, are you not?

A. That is correct.

Q. Now, sir—

[fol. 306] A. But you should turn over to page 12, and Section 12.

Q. That is exactly what I am going to do.

A. And you will read there—

Q. Well, would you mind letting me read it?

A. Be happy to.

Q. Now, turn to page 12 where the duties of the general secretary and treasurer are set forth in Section 12:

"It shall be the duty of the general secretary and treasurer to devote his whole time to the interests of the Brotherhood; he shall keep a true and correct record of all proceedings of the Grand Lodge; he shall read all petitions, resolutions and communications submitted to that body, and file and safely keep all important papers, seal all charters and dispensations emanating from the Brotherhood. At each quadrennial meeting of the Grand Lodge, he shall submit a complete report of the receipts and expenditures of all funds during the quadriennial period, the membership of the Brotherhood with the number of deaths, expulsions, and withdrawals; also, a report of the lodges organized and disbanded, and all other matters pertaining to his office.

"He shall receive all money due the Brotherhood on [fol. 307] assessments levied by it as hereinafter provided, and otherwise, and issue receipts for same.

"He shall be the custodian in conjunction with the President and Board of Trustees of the funds and property of the Brotherhood."

Now, that is you again, isn't it?

A. Yes, but there is a little variance between your interpretation and as to the actual working of the law.

Q. The variance? I can't hear you, sir. Would you mind repeating that?

A. I say there is a variance between your interpretation and as to how the law, the Brotherhood, operates. This Article from 17 down on page 13, line 17 down, says "he shall receive all money due the Brotherhood on assessments levied by it as hereinafter provided," and the only assessment we can levy under the constitution is one that is granted us by convention action. To my knowledge, there is no convention action setting up the Brotherhood or the Legal Department. We don't have any control of it. All we accept is the monies that they give us, and we, in turn, issue checks that are asked of us to prepare.

Q. Now, would you read the next two words after what you read, "and otherwise"? What significance do you give to those two words?

[fol. 308] A. Well, probably the funds that you are talking about are the "otherwise." Any fund that comes into the Brotherhood comes into our auditors. Our general auditor advises me that he doesn't at any time know anything about the Legal Aid funds, other than what is given to him in a lump sum, Your Honor, and then if there is money requested, we disburse it, but I have no personal knowledge of it, because any check under \$2,000 can be handled by our Auditing Department.

Q. Do I understand you to take the position, now that the Legal Aid Department is so separate and distinct that you, as the general secretary and general treasurer, you not only have no knowledge of what they are doing about money, but you have no way of getting any information about what they do about money, and that you haven't either the knowledge or the power to get that knowledge; is that the position you take?

A. Well, I am telling you—you say I am "taking the position"; I am telling you the truth, as general secretary and treasurer of the Brotherhood, I don't have anything to do with the Legal Aid Department. In these statements that our Auditing Department prepared, we show the monies that were turned over to our bookkeepers during the years 1954 to date. We show the money disbursed. There is no notations, there is no divi-

sion of who it was collected from; who it goes out to, and until I came in this court, I didn't even know that there was such a document as you had—you showed me during the trial, when you enumerated these funds, how they were broken down. That is the first knowledge I had of it.

Q. Now, Mr. Chase, I want to preface my next question with an understanding between you and me that I don't agree with what you have said, but assuming for the sake of this question that it be true and correct, I want to ask you who is the person that can—that I can serve a subpoena on that would give me those records, if I want?

A. I imagine that it would either be the president or the chief clerk of the Legal Aid Department.

Q. Who would the chief clerk of the Legal Aid Department be?

A. Mr. C. R. Maher.

Q. Mr. C. R. Maher?

A. Yes, sir.

Q. I believe that we requested his presence here, and we were advised that he was so ill, he could not appear in court. Is that a fact?

A. He has had a heart attack, yes, sir.

Q. And Mr. Kennedy has testified in his deposition [fol. 310] that he was so ill that his doctors wouldn't permit him to come here; is that true or not?

A. To my knowledge, it is. He didn't tell me that.

Q. It is what?

A. I say, to my knowledge, that is correct.

Q. I see. Now, what is Mr. Maher's position?

A. Well, he is the chief clerk of the Legal Aid Department, and he reports only to the president of the Brotherhood. He doesn't report to me, other than the fact that under the law, I pay him his salary due, which is also collected.

Q. You mean to say now that the chief clerk of the Legal Aid Department doesn't tell you anything about the financial operations of the Legal Aid Department?

A. At all?

Q. At all?

A. Yes, sir, I will vehemently say that. I know nothing about it whatsoever.

Q. Very well. I have these questions to ask you, again on the same assumption. You received this subpoena on the 22nd day of July; is that correct? You have already said it was.

A. Whatever the day was, that is right.

[fol. 311] Q. Yes. You were then aware, according to your present statement, that these records, as you say, were not under your control, but were under the direct control of President Kennedy; is that correct?

A. I think that would be a correct statement.

Q. What have you done between July 22 and now in regard to a conference with President Kennedy as to how you were going to get them down here, or whether you could bring them?

A. Well, I don't know what subpoena you served on the president. I have discussed the case with him several times. My auditor is the one that keeps my records. Our general auditor, he is the one I counsel with in respect to the records and that is where I got the records from that I thought was—

Q. Did you take up this subpoena with President Kennedy?

A. Did I take it up with him personally?

Q. Yes.

A. We discussed it.

Q. Did he know that you were subpoenaed to bring these records here?

A. That I couldn't tell you.

Q. Did you show him the subpoena?

[fol. 312] A. No, I didn't show him. I showed general counsel.

Q. I ask you this, Mr. Chase: Weren't you and President Kennedy both discussing, when you were here on July 21, 22, that you had both been served with subpoenas, and that you had to come and that you had a subpoena duces tecum? Didn't you tell him that?

A. I told him that, yes, sir.

Q. Yes, of course you did. And you walked around the John Marshall Hotel waving it in the air, and you were mad about it, weren't you?

A. No, I wasn't mad about it, and I wasn't waving it in the air.

Q. Now, Mr. Chase, I want to ask you this question, and I want a very simple answer to it: Did Mr. Kennedy tell you that you could or could not bring these papers in response to this subpoena?

A. He didn't tell me anything about them.

Q. Did you ask him for the permission to bring them?

A. I didn't know what papers you wanted. I went to my Auditing Department, and my Auditing Department gave me the records we had.

Q. I will go back, if you don't know what we wanted, and see if you understand what these words said: "All [fol. 313] financial records of the Defendant Brotherhood of Railroad Trainmen relating to the Legal Aid Department and the Department of Legal Counsel."

Now, you and President Kennedy both understood what records we wanted, didn't you?

A. I told you once before that I didn't know there were any other set of records other than the ones we had, so how could I talk to the president about it?

Q. Let's get back to the starting point. Would you explain to me what your understanding of those English words are, "All financial records of the Defendant Brotherhood of Railroad Trainmen relating to the Legal Aid Department and the Department of Legal Counsel"? Now, what do you think that means?

A. I brought that—just what I have control over.

Q. What do you think those words mean?

A. I don't know. I gather from being at this trial of hearing that you probably wanted—now, I can see that you wanted a broken-down record of what the contributions were made. I don't have them. I have no way of getting them. We don't have any record of it.

Q. Let's stick to the point that I am asking you, please, sir. The 22nd of July, you were here on attendance of a several-day conference, were you not?

[fol. 314] A. That is correct.

Q. Mr. Stallard was there at that conference, was he not?

A. No, I don't think he was.

Q. You didn't see him there?

A. He made an appearance, and that was all.

Q. Yes. Well, you knew he was representing you in this case?

A. At that time, I don't know whether I did or not. I probably did.

Q. Well, did you know you had a general counsel named Mr. Henslee?

A. He isn't our general counsel, sir.

Q. Well, what is he?

A. He's a—

Q. He appeared in one of these proceedings marked as general counsel.

A. Well, you got the two Henslees mixed up. That was Edward Henslee, Sr., used to be the general counsel. The general counsel of the Brotherhood now is Wallen K. Sullivan.

Q. Well, did you, on July 22—I understand your testimony to the chancellor is that you were served with this subpoena, but you did not understand what those words meant; is that correct?

[fol. 315] A. (No answer)

Q. (Continuing) Well, say yes or no. Did you understand it or not?

A. That isn't a correct way to answer it. I was served with a subpoena. I took this to my auditor, who audits and has strict control of our funds, and asked him what he had in the way of his audit, and that is what he gave me. That is all I can give you.

Q. Mr. Chase, don't let's make this struggle more difficult than necessary. You have testified you didn't know what records we wanted; is that correct—by these words?

A. Well, you are trying to misconstrue my words. I told you that after being in this court, that I can see that you wanted records that I didn't have at that time.

Q. I am not talking about what you thought today in court.

A. When I took that record back, I asked our auditor for those records, and he gave me an exact copy of the records we have available, which I have brought with me.

Q. I have asked you this simple question, and I would ask you to answer it, please, sir. Did you understand from

this subpoena and the words contained therein which I read to you, "All financial records of the Defendant Brotherhood [fol. 316] of Railroad Trainmen relating—" Do you understand what the word "relating" means?

A. I think I do, yes, sir.

Q. (Continuing)—relating to the Legal Aid Department and the Department of Legal Counsel." Now, do I understand you to say that having read those words, on July 22, you did not know what they meant, and did not know—

A. (Interposing) After—

Q. (Continuing) —wait a minute, please, sir. Let me finish.

A. After reading those words, that is what I brought down in our department.

Mr. Stallard: Your Honor please, may I interpose an objection here? The witness says he has brought what he has relating to the Legal Aid Department, and if we saw it, it may be sufficient.

The Court: That could be possible.

Mr. Bowles, III: It couldn't be.

Mr. Bowles, Jr.: If Your Honor please, they are admittedly not originals.

Mr. Stallard: He says he has the audit from Ernst and Ernst.

Mr. Bowles, Jr.: That isn't what I asked him for.

Mr. Stallard: He says he has the record, all he has. [fol. 317] The Court: What you want are facts, Mr. Bowles. The Court will do all it can to aid you in getting such records as you want.

Mr. Bowles, Jr.: Exactly, sir, and I am trying to get this gentleman to tell me and I will ask you again:—

By Mr. Bowles, Jr.:

Q. When you didn't understand this, did you inquire of either the president or did you inquire of your general counsel, Mr. Sullivan, or whatever his name is—wait a minute, please—did you inquire of Mr. Stallard? Did you make any inquiry to determine what the records were of the Legal Aid Department and Department of Legal Coun-

sel showing its financial transactions, knowing yourself that you didn't know anything about them? Now, did you do that?

A. I discussed it with Mr. Stallard. I don't know how I would discuss it with the president, because our department keeps those records. We have a volume of business amounting to twenty-three, twenty-five million a year. I am not familiar with each detail. I told our general auditor I wanted what records we had as you put forth in that—whatever you call it—subpoena, in connection with the Legal Aid Department. He gave me that record, the ones that [fol. 318] we have available from 1954 to date.

Q. Then I understand correctly, now, that you did discuss this subpoena and its requisites with Mr. Stallard, with President Kennedy, and also your general auditor?

A. No, I didn't say I discussed it with Mr. Kennedy.

Q. With who?

A. I didn't say I discussed it with Mr. Kennedy.

Q. Well, he is the only man, according to your contention, that could have given you authority to bring them, isn't he?

A. Well, of course, you are taking for granted that I knew what you wanted, and I am telling you that I didn't know what you wanted, according to what you are asking me. I brought you the records I had in my office, which is all that I knew anything about, and I wouldn't have any occasion to ask the president of the Brotherhood about it.

Q. Mr. Chase, I am just trying now with great difficulty, to get this very simple question settled between us before I undertake to see what you brought. You admit that when you got the subpoena, you didn't know what was wanted. I am trying only to find out now, with your familiarity as the general secretary and general treasurer, as to what efforts you made with the people in your own organization, [fol. 319] to see whether or not they could throw any light on what you might possibly want.

A. I have told you, sir, several times, that when I took them back, when I got the subpoena, I thought it was a subpoena, of course. I took it back to my auditor. I asked him, and I wanted those records, and that is what he gave me.

Q. And you asked him to give you what he had instead of what the Brotherhood had; is that correct?

A. I have no authority to speak for the Brotherhood.

Q. Aren't you the general secretary who is the custodian of all its financial records?

A. Yes, sir—no—wait a minute. Now, you're—

The Court: I think, Gentlemen, we have gone far enough along in this line. The Court is interested in the merits of the case, and if there are records that you want that are not available, the Court will use every possible effort to give you what you are entitled to. Now, let's see what he has got, and what you need to satisfy what you want.

Mr. Bowles, Jr.: All right, sir. Well, he's already told me that he hasn't got what I want. Now, what I want, sir, is—

The Court: I think we have gone far enough along for [fol. 320] this record to disclose to anybody what the situation is. Here's a subpoena, an order upon which the subpoena is based, calling for all financial records of the Defendant Brotherhood Railway Trainmen, relating to the Legal Aid Department or the Department of Legal Counsel, and all audits that are material and proper to be produced; that said records and papers are in the custody of William E. B. Chase—

The Witness: That is exactly what I brought, Your Honor.

The Court: The witness says that he has produced all the records of the Brotherhood of Railroad Trainmen that are in his custody, or that he has the control of. Now, if there is a misunderstanding, let's clear it up. I don't think further exploration along this line is helpful to the case.

Mr. Bowles, Jr.: Well, Your Honor, please, I would ask the Court under the circumstances, to order the defendant to produce the records that I have requested.

The Court: Well, I don't know which ones you have requested. Let's get at it this way, if you will. If I understand it, I am not sure that I do, but if you help me, I will try to understand you. You have obtained and put into this record through the witness, Mr. Nelson, certain partial things—some, I might say, scattered pages, photo-

stats of scattered pages. You have got in this record already—I am not certain how much you have got—but you have got contributions made by Savage. I understand he is the one you are mainly interested in.

Mr. Bowles, Jr.: We do not have all of the records on that, sir.

The Court: I know. I know you haven't, but you have in this record the contributions by Savage to the Legal Aid or Department of Legal Counsel—this is Legal Aid, for the years '53, '54, '5, '6, '7, and '8 but detail already.

Mr. Bowles, Jr.: I do not have them for '59 or '60, nor do I have any records of the regional investigators, which Mr. Nelson said that he saw them, himself, and may I remind the Court that twice before in this proceeding, we have called for these exact records, and they have not yet been produced.

The Court: I am not certain that this subpoena that is issued and pursuant to this order, specifies these exact [fol. 322] records, sir.

Mr. Bowles, Jr.: No, sir, but if I specify all of the financial records, they are bound to be in there, if he produced them all. The ones I want would have to be there.

The Court: If they are records of the Brotherhood, in the custody of the general secretary and treasurer. That is all coupled up, isn't it?

Mr. Bowles, Jr.: I have just read to Your Honor, under this constitution, he is the man responsible for all of their receipts and disbursements of the whole Brotherhood.

The Court: Well, he says he has an audit of the Brotherhood.

Mr. Bowles, Jr.: I didn't ask him for the audit of it. I asked him for the original records.

The Court: Well, if you looked at what he has got, it may be beneficial, and give you at least part of what you want, Mr. Bowles. The Court is going to aid you to the best of its ability.

Mr. Bowles, Jr.: Well, sir, I just happen to know—well, I will desist.

The Court: We don't get anywhere by personal matters, or—

[fol. 323] Mr. Bowles, Jr.: But, Your Honor, we asked for originals, and he brings me copies. I don't think he is in compliance with the subpoena, and I don't see why I should have to look at the copies to see whether I should be satisfied with them, instead of the originals.

The Court: Was it in this case, Mr. Bowles, or some other I had before me, the records of some of these corporations; all the financial records would take several box cars to bring. It is wholly impractical.

Mr. Bowles, Jr.: That is not true here. Mr. Nelson has testified that there were three books. That is all—Book 1, Book 2, Book 3.

The Court: You called for all the financial records of the defendant relating to Legal Aid that are in his custody, without any limit in time, and I don't know, but we are not getting anywhere. You tell me what you want, and if it is available, I will see that you get it.

Mr. Bowles, Jr.: Well, I said yesterday evening to the Court and to these gentlemen, on the record, exactly what I did want; what I wanted with relation to the remaining [fol. 324] regional counsel, remaining regional investigators for the same period of time, the same thing that Mr. Nelson had said was in existence at the time he took out one relating to one firm. I want the rest of that. I want to see those volumes, and I don't see why I can't see them, and that is exactly what these gentlemen are bound to have known is what I wanted.

The Court: Well, there is quite a difference of opinion about "bound to know." You may be perfectly certain you are right, but it is perfectly possible you are not altogether right. I am just here trying to get the facts. Now, Mr. Stallard, you do understand now what he wants?

Mr. Stallard: Yes, sir, and I am not sure we can furnish it to him. I understand they had two break-ins up there, and I am not sure we can. I don't know. I cannot say that positively.

The Court: They were there when Mr. Nelson saw them.

Mr. Stallard: He saw some, but he doesn't know what they were. Now, we furnished counsel with a whole lot of financial records here; tremendous financial records, have

[fol. 325] already been furnished to him—what payments have been made on cases.

The Court: He is being very specific now, regardless of what he has said in the subpoena. He is quite specific now about what he wants, and if you look at the exhibit—can you give me the number of the exhibit that Mr. Nelson filed, which are certain pages by number and certain left out?

Mr. Bowles, Jr.: That is correct. Mr. Nelson spelled it out. You remember, he skipped from page to page. I want the intervening pages.

The Court: That is exactly what I said, Mr. Bowles. Give me a chance.

Mr. Bowles, Jr.: I beg your pardon. I will just sit down.

The Court: If you will give me the number of the exhibit, that may be helpful.

Mr. Bowles, Jr.: That is what I was undertaking to do. They are written down there. She can find them.

(Note: Mr. Bowles is referring to Miss Moten, the secretary.)

Mr. Stallard: Mr. Nelson made reference from Book 1, and similar records he took '53, '54, '55, '56, '57, '58. [fol. 326] He cut off February 12, '59, Bernard Savage contributions.

The Court: Yes. I commented on that.

Mr. Stallard: He gave those; and that came in Book 1, Your Honor. Now, as I understand, does he want those—Savage's—does he want Hildebrand?

The Court: Well, we will look and clear this up in just a minute what he wants. Let's get this exhibit.

Miss Moten: I have that "Pages, Book of Regional Counsel. Pages from the book of the Regional Counsel, payroll sheets." Payroll sheets is 2, Judge.

The Court: The pages are the first one. The next is numbered 25.

Mr. Bowles, Jr.: They are numbered Nelson A, B, C, D, E.

The Court: Here. "Payroll sheets." I am looking at the Nelson B. now, 25, 26.

Mr. Bowles, Jr.: They are not numbered by numbers, sir. They are numbered—

The Court: Some of them are numbered, and some not, I am looking at one that is numbered 25; another one numbered 27, and then number 29.

[fol. 327] Mr. Bowles, Jr.: They run Nelson A, B, C, D, E, F, G, H, I, J, K, L, M, N. Those are the exhibit numbers as they were entered into the record.

The Court: I am looking at Nelson Exhibit D, and I am referring to the numbers of certain pages that he picked out, and took photostatic copies, or had them taken for him. I see the numbers 25, 29, then 79, then 83, and then 99, and then 101, 107, 109, 111. Now, this was taken—I don't recall what book this was taken from. I will pass these over to Mr. Bowles, please.

Now, Mr. Nelson picked out from another source photostatic copies made of the account with Investigator Clinkenbeard.

Mr. Bowles, III: There were some forty-nine other investigators, Your Honor, besides the man, Clinkenbeard.

The Court: Those, you want?

Mr. Bowles, III: The other forty-nine, yes, sir.

The Court: You want to get full information of the details of the facts that Mr. Nelson was able to give you in part; is that right?

Mr. Bowles, Jr.: That is correct, sir.

[fol. 328] Mr. Bowles, III: Like we started back in the first part of 1960, when we first asked, and you remember, we spent a whole day up here, Your Honor, going over the fact that they gave you page 1, and left out page 3 of everything we got the first time.

The Court: No, I don't recall that.

Mr. Bowles, Jr.: May I suggest this to the Court, that when we undertake to talk about what Mr. Nelson brought into this case piecemeal from a book which he designated as Book 1, Book 2, and Book 3, now I call your attention to the fact that his records, and the time when he is examining them was in 1958. I want the books for '59 and '60 and '61, as well.

Mr. Stallard: I beg your pardon, he was there. He cut off on February 12, 1959, and even went into August of '59 one place.

Mr. Bowles, Jr.: Well, I want the ones from August on through to December, '59, for all of '60, and the ones up to October 7, 1961.

The Court: Mr. Chase, are you able to tell us, do you know anything about the records from which these were taken?

[fol. 329] The Witness: Your Honor, I want to be helpful to the Court. Just as sure as I am sitting here, it is the first time I ever heard of them or saw them, is when I walked into this court either yesterday or the day before. I don't know where they are. I have no way of getting the records of the Brotherhood insofar as the Legal Aid Department. I have them from '54 forward.

The Court: I was asking for information about the books. You don't know anything about them?

The Witness: I don't know a thing about them.

The Court: Do you, Mr. Stallard?

Mr. Stallard: No, sir, I do not. I have never been in the department. I understand Mr. Chase has only been secretary and treasurer one year, so he has not gotten—

The Court: Where are the headquarters of this Legal Aid?

The Witness: The department? I have 194 or -6 employees under me, Your Honor. We have the thirteenth, fourteenth floors of the Standard Building.

The Court: Is that where the Legal Aid Department is?

The Witness: No. Department of Legal Aid is on the [fol. 330] twelfth floor, and the president's department is on the sixteenth floor.

The Court: Same building?

The Witness: Same building, yes, sir.

The Court: And Mr. Nelson, when he got these, was in the Legal Aid Department?

Mr. Stallard: Legal Aid Department. He said Mr. Maher gave them to him.

The Court: How do you spell that name?

Mr. Stallard: M-a-h-e-r.

The Witness: No, sir, it is M-a-h-e-r. He calls it Maher (pronounced Mayer), but it is Maher (pronounced Ma-her.)

Mr. Stallard: I have a doctor's certificate here. He had a heart attack.

Mr. Bowles, Jr.: He wrote me a letter on October the 3rd, sir; that is the reason I put it in.

Mr. Stallard: Well, he can write a letter but he has got a heart attack now.

Mr. Bowles, Jr.: Well, I suggest, sir, that he could assemble the papers, and give them to Mr. Chase, if he is unable, from a physical disability, to come here.

Mr. Stallard: If I am determined, I will go up there [fol. 331] myself.

The Court: What is your motion?

MOTION FOR ADJUDICATION IN CONTEMPT AND
RULING THEREON.

Mr. Bowles, Jr.: My motion, sir, is to hold this defendant in contempt for failure to respond to this subpoena.

The Court: And administer what punishment?

Mr. Bowles, Jr.: Direct him to respond again to the requirement of the call which we made, which is paper No. 6 in this proceeding, and also the subsequent call, which I think was filed, and the order which Your Honor entered, yourself, on May 11, 1960, directing that these records be produced. And not only have we asked that twice—

The Court: I would like to see that order.

Mr. Bowles, Jr.: (Continuing) —not only have you ordered it to be produced now, we have a subpoena for its production, and they are not here, and that is, we submit—

The Court: I understand they are not here, Mr. Bowles. I asked you not to keep on repeating the same thing, because I hear the first time you say it.

Mr. Bowles, Jr.: I think my position is clear to the Court. I am saying nothing further.

[fol. 332] The Court: If this gentleman is in contempt, he should be punished, and you move that I punish him?

Mr. Bowles, Jr.: Yes, sir.

The Court: To what extent?

Mr. Bowles, Jr.: Well, as far as I am concerned, you can put him in jail until he brings them.

The Court: If that is a sufficient answer to consider, this is a call for production of documents, is that the order?

Mr. Bowles, III: Paper No. 7 is the order. I am sorry. Paper No. 7 is the order.

The Court: I have No. 6. It calls for production—that would be No. 7.

Mr. Bowles, III: That would be the order, and the questions are No. 12 and No. 17, 17-A and 17-B, Your Honor.

The Court: Paper No. 7; 17. "A list of all regional counsel and legal counsel who have within the period of five years next preceding the institution of this suit on June 29, 1959, contributed any sum either to the Legal Aid Department or to the Department of Legal Counsel or both"—I am skipping some. "The amount of contributions, a list of claims of litigated matters on which contributions are made, name and address of claimant, the railroad location and so forth." That is really what you want now?

Mr. Bowles, III: And they told us at that time, that they did not have that, Your Honor, and then we find out through Mr. Nelson, by going to Nebraska, that they do.

Mr. Bowles, Jr.: Your Honor, and furthermore—

Mr. Stallard: (Interposing) Your Honor, read the answer—

The Court: I have to read the answers. I think it is a good suggestion. I will read the answer which you made to 17.

Mr. Bowles, III: The answers are in paper No. 12, Your Honor.

The Court: 17, I believe was the number. The first call in 17 is for a list of all regional counsel and legal counsel who have, within five years preceding June, '59, contributed any sum to the Legal Aid Department or the Department of Legal Counsel. The answer to that: "There were no such contributions made per case."

Mr. Bowles, III: Your Nelson Exhibits I and J show that there were, sir.

[fol. 334] The Court: "That they were made for an aggregate of cases over a period."

Mr. Bowles, III: No. That is Nelson Exhibit A. We introduced the two separate cases, I believe. I believe they are I and J.

The Court: Pass this to Mr. Stallard, please.

Mr. Bowles, III: If Your Honor please, in the answer in 17, you will note that they say that the amount contributed by Mr. Savage for 1954 is not available. Yet, Nelson Exhibit A gives us the amount contributed by Mr. Savage in 1954.

The Court: The answer to that call, Mr. Stallard, which are filed by the affidavit of Mr. Maher: "There are no such contributions made per case."

Mr. Stallard: I understand. We have here, Your Honor, something taken direct from the lawyer, and it is his ledger, and he sets up on all amounts, on his books, as I understand it, they make it—they figure up at the end of the year—they only can file at the end of the year, because they don't know what percentage of business is being done by sixteen people, so they will work out, say, twenty-three, and it came out yesterday to Henslee; one to so-and-[fol. 335] so; to six percent; so it is all at the end of the year. This is a lawyer's register sheet, not our ledger sheets at all.

The Court: It was obtained by Mr. Nelson from your offices, I believe.

Mr. Stallard: No, Your Honor. I think this was gotten—this is Davis, Rerat, Yaeger and Lush. This is gotten in a suit against them, too, and I don't understand it at all, that it came from ours. This says the settlement shows the amount of money they got for "performing, adjusted attorney's fees, less monies advanced, less loans, check to Donald Bauer; fee twenty-five percent, extra expenses, Klein; special investigation expense."

The Court: No contributions there?

Mr. Stallard: No, sir, no contributions.

Mr. Bowles, III: The overhead expense, the twenty-five percent overhead expense is the contribution.

Mr. Stallard: Well, at the end of the year—

Mr. Bowles, III: And you can take Exhibit 38 through 66-E, and in each batch of those correspondence is a lot of letters of Mr. Savage returning that to the Brotherhood. [fol. 336] Mr. Stallard: No, Your Honor, if you take the exhibits that have been filed here, the way I understand it, the way the department would figure it out, let's see—here's a letter to Mr. Savage from Maher. He tells him, he says, "I settled on September 11, 1953." It looks like it could be '56. He says, "wished to advise that the case was settled today for \$3,750, Brother so-and-so received \$2,812, with which he seemed very well pleased, returned to work May 15, having lost forty-seven days," but he doesn't remit any fee at that time, but the department has what he settled that case for, so at the end of the year, they would issue a bill on his percentage, his pro rata share, like the pleadings show.

The Court: You have a record of that, haven't you?

Mr. Stallard: We would have a record; only, as I understand it, it was brought out yesterday, they would add all of these up, and see what percentage Savage would owe the department at the end of the year. Until the whole year went through, they wouldn't know what percentage to charge.

The Court: You have the contributions made by all regional counsel at the end of each year in question? [fol. 337]

Mr. Stallard: I am assuming that we do. I will be glad to go up to the department, myself. I have never been in it, but I would be glad to go up, and see what I could find. I just don't know whether we have them or not, but it is not exactly that each as it is settled, because you wouldn't know that—it couldn't be figured out that way.

Mr. Bowles, Jr.: Your Honor, I have to call Your Honor's attention to one of these exhibits by Mr. Nelson, in which it is a running account from the Brotherhood's books of each lawyer, and he only got the Rerat one, showing case by case, how much he contributed, and balance due and so forth, and so on. That is in there. I forget which one it is.

The Court: Will you let me see that?

Mr. Bowles, Jr.: Book No. something.

The Court: I have one that has Book No. 4 marked on it. It is Nelson Exhibit H. I want to say to counsel, in this situation, to aid the Court in getting at the facts and the truth, please don't understand that anything I said is in the nature of a reprimand of counsel. I am interested only in getting the facts.

[fol. 338] Mr. Bowles, Jr.: I couldn't assume it would be a reprimand, because we haven't done anything to be reprimanded for.

The Court: Well, your attitude indicated that you thought that I was abusing.

Mr. Bowles, Jr.: Not at all.

The Court: Now I am talking, if you will give me my turn to talk. I am appealing to counsel now, to aid the Court in as dispassionate, quiet way as they can, to help me get at the core of this situation, and I want more light—

Mr. Bowles, Jr.: That is why I rose, Your Honor, to tell you if you look at Nelson Exhibit D, you would find that that is the sheet that is taken from the Brotherhood's record that shows from their Book No. 3, relating to the firm of Davis, Rerat, Yaeger and Lush. Now, I want to see that book, so I can see all the rest of them.

Miss Moten: You said D. You have D, Judge.

Mr. Bowles, Jr.: I think so, that is the way I marked it, but I realize we got confused quite frequently there in the numbers we were giving to them. And I will remind the Court, also, that other exhibits in relationship to charge [fol. 339] ing of this salary back and the commissions to these investigators, also, tie into individual cases in these records.

Mr. Stallard: Well, if counsel would tell me how they could figure up—Mr. Nelson said yesterday, and I can read from my record, the contributions for 1957 or '9, and I don't know which—my own writing—he says \$33.5 was assessed to Henslee and Henslee, which amounted to \$19,109.25 for that year. Davis, Rerat, Lush did a million eight hundred some thousand, and they said 22.77 percent that year, \$12,412.99. The only way I know you could figure it per year would be for each lawyer to send into

the department what business they did, so they could calculate a pro rata share for each lawyer. We admitted that. This was in the allegations. We came right back and said that is exactly what we did. Now, this is the mechanics, how they have arrived at it. Now, apparently, a big firm like you had there, they sent a photostatic copy of this sheet on their ledger to the department so they could see all the transactions.

Now, Mr. Bernard Savage didn't do that. He sent Mr. Maher these, they are in as exhibits—he sent Mr. Maher on cases, and he would figure out how much his fee was, but he didn't transmit any money. But that was [fol. 340] for the department, so at the end of the year, they could say, "Mr. Savage, your share is so-and-so, you have done a certain amount of business," so he didn't keep his books as good as that lawyer.

The Court: Do we have in evidence what Mr. Savage paid for '53 through '58, inclusive?

Mr. Stallard: Yes, sir, that is based on a percentage.

The Court: And Mr. Bowles wants that carried further.

Mr. Bowles, Jr.: Yes, sir.

The Court: He wants '59 and '60.

Mr. Bowles, Jr.: Yes, sir. In the complete spirit of trying to cooperate with the Court, and to make this difficult question more plain and simple, may I make this statement, Your Honor. If you will take the trouble, and it is a lot of trouble, and I am not asking you to do it—I am going to state to you what you will find if you look at it. If you will look in the *In re: Beck* case, the man who tried it came here, and told us certain things—if you will examine into that record, you will see that this exact same situation arose there—the same difficulties—call after call, [fol. 341] trying to get these papers, subpoenas for them. Finally, the Court entered an order which I have asked you to enter before, and which you have entered before to produce these records, and Mr. Nelson, himself, went to their fifteenth floor or thirteen—twelfth floor, right underneath Mr. Chase, and, himself, under the order of the Court, looked at what I want to see, and got out of it what was suitable in his case.

Now, all I want to do is the privilege of seeing in this case, and Mr. Lewis' case and Mr. Rives' case, who have come from outside, and taken Virginia people to outside, down to Birmingham and Atlanta and other places since the magic date—all I want to do is the privilege of seeing the records under those circumstances that the Nebraska Court made them let Mr. Nelson see out of the same books, and I want that brought up to date to 1961, just like the Court in Nebraska made them bring up for Mr. Nelson, to 1959, which is the time he was talking about. Now, that is what I am after.

The Court: Would you like to have an order authorizing you to inspect those records?

Mr. Bowles, Jr.: I would be glad to have that order, if [fol. 342] I can't make them bring them here. I have been to Cleveland once, and I don't want to go the second time, unless I have to. Now, I want to be able to do exactly what Mr. Nelson did, up to '61, and that is what I would like the Court to order, and that is what I thought I was getting the Court to order when I got the man that the constitution says has custody of these things under subpoena to bring them. Now, all I want is one. That is all I want.

The Court: I know, of course, with your usual care, you did what you could with the information that you had, but this witness comes here with certain records which have not been looked at yet at all, and he says that he has those records under his control, and then refers to them, and says the records are in his custody, and he hasn't done it. Now, I am not disposed to hold this witness in contempt under those circumstances. Now, we will talk about an order authorizing you to go in person and inspect these records.

Mr. Bowles, Jr.: May I, very humbly, in the alternative, suggest to Your Honor, that you may, under these circumstances, have properly, in my judgment, done what [fol. 343] the Supreme Court of the United States did to the United Mine Workers, and fine this defendant so many dollars per day until they do produce those records in response to your first call in your order?

The Court: I am not prepared to do that unless and until I have more information about the bulk of the records of an organization as large as this.

Mr. Bowles, III: If Your Honor please, as I understand from the exhibit of Mr. Maher, Exhibit 78, in his testimony given in call, he is vague and indefinite as to how many books there are, but as near as I can figure out, there aren't more than five. There are a small number of books. The man that is in charge of them, if you will read his deposition given, "wishy washed" all around about how many there were, and "Well, I don't know, I haven't seen that in so many years," and what-not, but I don't think there are any more than five books, and I sincerely state that to the Court, as my personal belief.

Mr. Bowles, Jr.: I also remind you that Mr. Nelson, when he saw them, only saw three books. He marked [fol. 344] them Book No. 1, Book No. 2, Book No. 3, and he said, if you will remember, that the first things that he introduced were on Senate pads, which we know as Blackstone pads.

Now, I think, sir, unless I can be corrected about it, that that is the extent of the records that we want to see. That is all that Mr. Nelson saw, and I don't see why it can't be ordered.

The Court: Now. Mr. Stallard?

Mr. Stallard: May I make a reply?

The Court: Yes. Yes, sir.

Mr. Stallard: I cannot put my hand on it, but if I remember correctly, Mr. Maher has made an affidavit which has been introduced here as evidence on an interrogatory that there were no payments after April 1, 1959. Counsel demands to know what were the payments. Well, if you haven't got any payments--no books. But he says he has got to know. Well, he made an affidavit, and they have introduced it as evidence. Now, if they have got some evidence to refute that they do have some books, then they ought to produce them, but until he gets evidence that they have some books after April of '59, because it has been introduced here, Mr. Maher made an affidavit, and [fol. 345] they have introduced it as evidence.

We don't have any contributions. There weren't any contributions. I think this witness here will give us the amount that was made. I understand they cut it off April 1, the magic date they call it. I understand it will show how much the contributions lumped together for that whole three months would be, and he has that information. He has it for '54, '55, '56, '57, but it ran up—it was a very large sum. I understand the sum would be—well, I have it here—for the year '54, it was \$189,000; for the year '56, \$216,000—no, that was carrying the balance. I beg your pardon. It was \$116,000 for the year '54; \$201,000 was the contributions for the year '56; \$203,000 for the year '57; '58, \$156,000; '59, \$158,060 which was paid at the end of '59; \$23,000, showing it was cut off April 1 at the end of the year. They figured up what business it had done, \$23,000.

The Court: Now, Mr. Stallard, either one thing or the other ought to be done in this situation. The original records pertaining to these matters we are talking about in this Legal Aid Department or the Department of Legal Counsel—the originals ought to be produced here before the Court, [fol. 346] or Mr. Bowles should, by order of this Court, be given access to the complete and detailed records—all the records in the custody—not of Mr. Chase, he wasn't interested in all the records of the Legal Aid Department or the Department of Legal Counsel as it became after.

Now, one or the other. This complainant is entitled to that, in my judgment.

Mr. Stallard: Well, I thought we had given him everything he had asked for, but we had not broken it down as he wants it broken down, as the lawyer from Nebraska did. And frankly, until yesterday, I didn't know that they were paid, they were breaking it down themselves in the department. I had no idea. I thought the contributions were the large sum, and they spent the money, but it looks like they broke it down, too.

The Court: Of course, you can get a result before a court in Virginia as well as elsewhere by the presumption in law that if a witness is available, and not put on, the presumption obtains that he would be adverse. I may allude to one

thing. I think it is proper that I should. There has been enough shown in this case, already, if I have the dates [fol. 347] right, it was back in Mr. Whitney's time that he sent out the formal notice to—one to an individual—that no contributions were to be made by the individual regional counsel to the Legal Aid Department, which it was then. And Mr. Kennedy, as you say, said that was merely—that that was nothing in the world—and he had both in his hands—but the discharge of that regional counsel. It doesn't bear that interpretation. It was an order then and there to cease. There will be no more payments. And then to all regional counsel was the other one that he had in his hand, and that is not susceptible of anything, but they realized it was wrong, and they were going to stop it, and they continued it, according to the answer and according to the admission, until April 1, '59, knowing that it was wrong.

Mr. Stallard: Yes, sir.

The Court: Now, that is the first thing. I should think this defendant, with that background, would make every possible effort to do whichever is more convenient and reasonable. Let counsel for the complainant go into their department and examine those records in person, and have copies of such as he wants, or I should think that defendant [fol. 348] would be very anxious and zealous to get all of those records, the originals, if practical, before the Court.

Mr. Stallard: I would prefer counsel going out there, because I don't know what the situation is. That is what the other counsel did.

The Court: Would you like to ascertain that you have the records before you make the choice?

Mr. Stallard: I will do it now. They close their office, I understand, at this time. They have fast time out there.

Mr. Bowles, III: One hour.

Mr. Bowles, Jr.: May I suggest to the Court, from the practical standpoint—you remember, I think it was that yesterday I mentioned to you that the Clerk in the Nebraska Court in Lincoln had gotten confused, and had not sent a document, and that we had that today. We phoned and asked that he send it. It was on my desk this morning. I submit to you that these three or four little books could be put on an airplane this afternoon, and they would be here in time for Your Honor to see them tomorrow morning.

Mr. Stallard: I wouldn't think so. The office—I don't [fol. 349] know what time it closes. What time does the office close?

The Witness: It closes at three o'clock your time. Our office closes at four o'clock, Judge, and that would be—I have Cleveland time, and Cleveland time, it is a quarter after four. The office closes at four o'clock.

Mr. Bowles, Jr.: Isn't your time the same as ours, Mr. Chase, now?

The Witness: No, sir.

Mr. Bowles, Jr.: Are you on Central Time?

The Witness: We are on Daylight time. I have Cleveland time, and my time is a quarter after four. Our office is open eight to four p. m.

Mr. Bowles, Jr.: Well, isn't there somebody that—in order to keep us from staying here longer—couldn't go down to the office tonight, and that could be reached at home, to do something about that?

The Witness: I don't know where the officers are. We have meetings all over the country, Mr. Bowles, and I don't know whether Mr. Maher is there or—well, nobody else knows anything about it.

Mr. Bowles, Jr.: Mr. Maher isn't well enough to go to meetings, is he?

[fol. 350] The Witness: I don't know whether he is home, or where he is.

Mr. Bowles, Jr.: Is Mr. Maher well enough to bring those books?

The Witness: I couldn't tell you that.

Mr. Bowles, Jr.: Would you ascertain that, please, and get me a doctor's certificate, because he is the man I requested and wanted originally.

Mr. Stallard: I have got a doctor's statement here that says he cannot testify. He had a heart attack.

Mr. Bowles, Jr.: Well, can he travel and bring them? I won't ask him a question. Just bring the books.

Mr. Stallard: He could send somebody with them. I don't think a man who had a heart attack could come down here just to bring some papers.

The Court: Mr. Stallard, I have indicated that in this situation, that confronts the Court that the defendant should be zealous to make perfectly open accessibility of these records in one or the other way, whichever is more practical.

Mr. Bowles, Jr.: Well, Your Honor, Central Daylight Time is the same as ours.

[fol. 351] The Court: He is on Daylight Savings Time.

Mr. Bowles, Jr.: But you are not on Central?

The Witness: No, sir.

The Court: He is on Daylight Savings. We are not. The witness says that it is one hour later now in Cleveland than it is here.

Mr. Bowles, Jr.: He is on daylight. And I understand that, sir. I am trying to convince my client of that fact.

The Witness: In fact, I have the time here. I haven't changed my watch. It is a quarter after four there.

Mr. Bowles, Jr.: I would like to say this one further thing to the Court. I am not in exactly the same position. I believe, that Mr. Nelson is in regard to having to make a trip to Cleveland. Mr. Nelson was requesting the books, and all he wanted to do was to go and see what records they have. I have demonstrated to this Court what records they have got; what books they have got, and it seems to me that under the proof that is already in this case, that it is unreasonable to require me to go to Cleveland to get them, rather than to require this defendant to bring here the specific things that we have pointed out.

[fol. 352] The Court: I haven't decided anything on the record, but it seems to me that in my remarks that are now in the record, I have given pretty clear information.

Mr. Stallard: I would be glad to call and see whether we could get the books brought here.

The Court: You are not trying to satisfy the Court or even opposing counsel at this juncture. My suggestion is that you are trying to make a full disclosure of every possible thing, on account of your client—for the sake of your client.

Mr. Stallard: I thought that we had, Your Honor, and I feel if we could show all the evidence here they have, and

will have the large sum paid by all the regional counsel, but it is not broken down.

The Court: They want to see the breakdown.

Mr. Stallard: The breakdown? Well, of course, they are entitled to that. I don't see that that would amount to anything.

Mr. Bowles, Jr.: Well, Your Honor, it embarrasses me very much to have to state for the sake of the record that I am unwilling to accept the statement of counsel as to [fol. 353] what those records consist of. I want to see the originals.

The Court: You are entitled to see the originals without assigning any reason, and it doesn't embarrass you, and doesn't embarrass Mr. Beecher Stallard at all.

Mr. Bowles, Jr.: I see that it doesn't.

The Court: Because he has not seen them. He doesn't know, so don't let's get at it that way.

Mr. Bowles, Jr.: Well, now, Your Honor, I have to state to the Court that I am unable to proceed further with the case without the records that I have called for.

The Court: I understand. Now, did I understand that you have another—to complete one of your exhibits, by something that is coming in the mail since we started, on your desk this morning, that you want?

Mr. Bowles, Jr.: The only difference in it is that—it is the same thing—one is certified, the other has already been accepted in evidence without objection.

The Court: Oh, I thought it was something left out.

[fol. 353a.] Mr. Bowles, III: And to be perfectly frank with the Court, I left it on my desk. It got here quickly from Nebraska, but got up the hill less quickly.

The Court: Counsel—I will expect all counsel always to be perfectly frank. There are some things taken for granted here, and I find that it works that way. I appreciate counsel's response to my appeal for aid.

Mr. Stallard: Your Honor, I would like to know the years, if I could get the years, because I want to be exact.

Mr. Bowles, III: Every year you have got.

Mr. Stallard: Every year I have got?

The Court: The whole, entire record of the Legal Aid Department.

Mr. Stallard: 1930 on!

The Court: Now, in existence.

Mr. Stallard: Now in existence?

Mr. Bowles, Jr.: What is that?

The Court: The entire records of the Legal Aid Department, Department of Legal Counsel, that are now available.

Mr. Bowles, Jr.: Yes, sir.

[fol. 354] Judge Lamb: Is that what you want?

Mr. Bowles, III: And if they are available from 1930 to date, we would like to have them from 1930 to date.

The Court: Well, that would cover the first statement.

Mr. Stallard: Your Honor, you mean the financial contributions? You don't mean all the records, because I don't think two box cars—

The Court: I don't know, and you don't know. I am tired of speculating on that. I want to do something that is practical. If there are two box cars, in fact, I am not going to have them brought into this courtroom. It is impractical, but if they are in fact, two or three books that can be brought, I don't see why you wouldn't be glad to bring them,—

Mr. Stallard: I would be delighted.

The Court: (Continuing) —in the posture the case now occupies.

Mr. Stallard: I agree, Your Honor. If that is what they want, the contributions that the lawyers are making—is that what you want?

Mr. Bowles, Jr.: Mr. Stallard, we don't know what you [fol. 355] have got. We want everything you have got, so we can see what we think is worthwhile to put into this case. That ought to be plain, I should think.

Mr. Stallard: I will see what I can do.

The Court: Now, we will adjourn the hearing of this case until—I will be happy to have a suggestion.

Mr. Bowles, Jr.: Well, Your Honor, I am going to make another alternative suggestion. My young friend here, Mr. Bowles, III, seems to be full of far more energy than I am after these three days, and he suggests that if it will

facilitate this defendant any, that he and his companion will go out there and get them, and bring them back on the plane, either tonight or tomorrow.

Mr. Bowles, III: I will get them, and I hope by the middle of tomorrow, if they will let me get them.

Mr. Bowles, Jr.: And maybe be back in court if they would let him get them.

Mr. Stallard: I would be delighted if they would do that. I don't know who is there.

The Court: Mr. Chase, are you going back?

The Witness: Sir?

The Court: Are you going back?

[fol. 356] The Witness: Yes, sir. I have a plane reservation at ten o'clock in the morning.

Mr. Bowles, Jr.: Well, Your Honor, don't let's send him under his direction, because he doesn't know anything about them.

Mr. Stallard: He has got other duties.

The Court: He is on the floor above, and he may have some way—

Mr. Bowles, III: He hasn't the authority.

The Court: (Continuing) —and Mr. Stallard might send a letter up there that might have some weight.

Mr. Stallard: I think I could call up, if I get somebody in the office, but I don't know their homes, where they are or who to call.

The Witness: There isn't anybody in the office, Your Honor.

The Court: Not now. I understand that.

The Witness: I don't know where they are. You can appreciate that I have been here since Sunday.

The Court: Mr.—if I refer to him as Junior, I won't say “young” Mr. Bowles.

Mr. Bowles, III: The third.

The Court: Mr. Bowles, III, the younger, will go. Will [fol. 357] you go with him?

Mr. Stallard: Yes. I will go with him, Your Honor.

The Court: I think you will get the records if you go together.

Mr. Bowles, III: I think I know what we want, sir.

The Court: Well, he will endeavor to find out where they are.

Mr. Stallard: Should we call up in the morning, which would be ten o'clock? By nine o'clock, call up to see if they would have them available? No use to go out there unless we just go on a blind trip.

The Court: I would like to have counsels' suggestion for the day to continue this to.

Mr. Bowles, Jr.: Well, I would think that we could continue on Friday.

Mr. Stallard: Friday would be all right.

Mr. Bowles, Jr.: A plane out there and back the same day. I did it.

The Court: Friday at ten o'clock. Well, try to be back.

Mr. Bowles, III: I will make every effort to get back, sir. [fol. 358] The Court: Well, if you can't, you can't. Ten o'clock then, we will go ahead. And this case will be adjourned until ten o'clock Friday morning, Friday, the 13th.

Mr. Stallard: Your Honor, could I cross-examine this witness, who has been examined, while he is here? Would it be necessary for him to come back? They have examined him, and I would like to examine him.

The Court: Mr. Bowles, you have not examined this witness at all on the merits of the case.

Mr. Bowles, Jr.: No, sir, we can't do it until we get the records.

The Court: What did you want to ask him at this time?

Mr. Stallard: I am going to ask him about the records he brought. I think it would be very helpful to the Court.

The Court: That is not cross-examination.

Mr. Stallard: No, it is not. But they asked him a whole lot of questions.

The Court: Well, they asked him a whole lot of questions about the subpoena duces tecum.

Mr. Stallard: I would be making him my own witness.

[fol. 359] The Court: I have ruled on that. I do not think it was an intentional, on his part, violation of the subpoena duces tecum. I do not think he meant any disrespect to the Court. That is what I believe. Now, you want to put your witness on?

Mr. Stallard: I would have to call him as my witness. I would be bound by it, but this is what I make of it. He says that these records that Mr. Bowles is going out and get—what will he know about them?

The Court: I don't know.

Mr. Bowles, Jr.: That is what I want to find out when I get them. I am not willing to excuse him until I get the records here, sir.

Mr. Stallard: I don't think we ought to be unreasonable with the witness. He has a great deal of business. If he can throw any light on it, we would like to ask him, but we don't want to be unreasonable with the witness.

The Court: Mr. Bowles, this witness says he knows nothing, and he has testified under oath that if these records exist that are going to be brought back, that would be the first time he has ever seen them.

[fol. 360] Mr. Bowles, Jr.: Well, Your Honor, all I can say to you is that under the circumstances, that the general treasurer of this corporation is responsible for all of its receipts and what-not. I would like to have the privilege of examining the "top dog" in the financial world of this corporation, of this association, on the records that I get when they come here, and he is the head man, according to the constitution. I would like the privilege when I get the records here, to see what familiarity he really has got with them.

The Court: Any reason to think he won't give you the same answer then that he gives you now? That he knows nothing about them, and has never seen them?

Mr. Bowles, Jr.: Yes, sir, because the records that are there are going to be the details of the summaries that he has gotten, and he has a great deal of information about that, he says.

The Witness: I didn't say that, Your Honor. The records that I have—you can see it here. Excuse me.

Mr. Stallard: Here is a copy for counsel.

Mr. Bowles, Jr.: I don't want to introduce those. I don't want to go into that until I get the originals, sir. I am [fol. 361] sorry, sir, but I don't want to do it.

The Witness: All I have, Your Honor, is—as the money was transferred to my department, counsel seems to think

that I issued the receipts to these counsel. I have nothing to do with it. I don't know a thing about it. The Legal Aid Department evidently turns over so much money, fifty or one hundred thousand dollars, or whatever it is, at the end of the year, that goes into our books as from the Legal Department.

The Court: Have a seat, sir.

The Witness: And as a result of that, there is no explanation—there is no breakdown. It is just monies received, and then from time to time, we spend it.

The Court: I want you to understand the position that the Court finds itself in; there are certain records that the complainant in this case wants produced—just on the point of being able to produce them, it looks like, we hope, and return Friday. You do occupy a high executive position with the defendant Brotherhood.

The Witness: Yes, sir.

[fol. 362] The Court: One of the two highest. General secretary and treasurer, and you are under summons of the Court and in this position at the request of counsel for the complainant. I want you to understand, sir, that the Court has not got the power to excuse you from that summons until counsel that summoned you is satisfied. It is a very important thing in our administration of justice that you have what they call "compulsory process" to get witnesses, and if you ever have a case, yourself, you would appreciate the wisdom of it. Sometimes it cuts one way, and sometimes it cuts the other, but it is a very important thing. The Court is without power to excuse you under the process. The counsel say they wish to examine you further. So you are still under the process of the Court.

The Court adjourns this case until ten o'clock Friday.

Mr. Stallard: If Mr. Bowles and I are not back, you will know we are still working.

The Court: Send us a telegram.

Mr. Stallard: All right, sir.

Mr. Bowles, III: I will personally see that that is done.

[fol. 363] (Whereupon at 3:35 p. m., an adjournment was taken to Friday, October 13, 1961, at 10:00 a. m.)

October 13, 1961

Met pursuant to adjournment at 10:00 a. m.

The Court: Good morning, Gentlemen. I am told that some of you had a good night's rest last night.

Mr. Bowles, Jr.: I did, sir, but I don't think any of the rest of them did. Now, let's see, where are we?

The Court: When we adjourned, the day before yesterday, Mr. Chase, I believe, was on the stand. I am ready to proceed.

Mr. Bowles, Jr.: Yes, sir, Mr. Chase, would you resume?

Mr. Chase: Sir?

[fol. 364] Mr. Bowles, Jr.: Would you resume your testimony, please, sir?

The Court: Mr. Chase is still under oath.

WILLIAM E. B. CHASE, the witness on the stand at adjournment, resumed and testified further as follows:

Direct examination (continued).

By Mr. Bowles, Jr.:

Q. Mr. Chase, it was my understanding on day before yesterday that you and Mr. Stallard and Mr. Bowles, III, and his assistant, were to go to Cleveland and undertake to find the records about which we were discussing. You did that, I believe?

A. Yes, sir.

Q. Have you brought back the records we were talking about?

A. I brought—I don't know if they were what you were talking about, but I brought back all the records that were available.

Q. You have brought all the records of the Legal Aid Department, I believe?

A. That's right.

Mr. Bowles, Jr.: And, if Your Honor please, I would [fol. 365] like, through this witness, to file those records as exhibits, with naturally the privilege of the defendant to have them photostated, or allow them to be photostated and introduced and remove or withdraw the original records. I presume they would want to have them back, as a matter of practicality, sir. I don't know, not yet having seen them, I don't know what that involves. I don't know how long that would take, and I just don't know exactly what I am talking about. I know my son does.

Now, I have this suggestion: There are certain records, I understand, which could not be physically transported at this time; because they were identified, but couldn't be assembled, and that they are coming by registered mail to the Clerk, with return receipt. What has Your Honor got to suggest as a practical way of getting those things into the record, for the purpose that we wish, to be identified? I think that is going to take some time, and my thought is that we might very well drive on, and in the testimony, in the case, subject to those things being introduced and identified, in due course.

MOTION TO KEEP LEGAL AID DEPARTMENT RECORDS FROM ASSOCIATION OF AMERICAN RAILROADS AND RULING THEREON

The Court: Mr. Stallard?

Mr. Stallard: Your Honor, I would like to make a motion [fol. 366] at this time. Mr. Bowles, III, Mr. Chase, and I went to Cleveland, and Mr. Julian Sherman, a representative of the American Association—Association of American Railroads, went, and he went into our office and wanted to see our books. I told him he could not see the books, that he was not a Virginian, he was not a party to this suit. He very kindly sat in the waiting room of Mr. Chase. We have certain records here which we would be glad to turn over to counsel, and let him examine them in any way, but I make a motion that these records do not get in the hands of Mr. Julian Sherman, representative of the American Railroad Association, and I was amazed to know that he would ride all the way to Cleveland and try to get into our offices.

Mr. Bowles, Jr.: You are through?

The Court: He is not under summons, or is he?

Mr. Bowles, Jr.: Who is that, sir?

The Court: The gentleman in question.

Mr. Bowles, Jr.: No, sir, he is not. I have stated to the Court very frankly all the way through this proceeding, and it has any number of times appeared in this record, that the Association of American Railroads have been very help-[fol. 367] ful to the Bar, and have pointed out to us evidence that might be available at various and sundry places. I said to the Court on Wednesday, I believe, that I was unwilling for my son to go alone, and that I wanted somebody to go with him. These gentlemen knew who Mr. Sherman was, and he went along as a helper to my son in that connection, and there was no objection offered to that until he got there, and then they said they didn't want him in their office, and I understand he didn't go in their office.

Mr. Bowles, III: And they stood right at the ticket counter yesterday morning out at the air lines and watched me buy Mr. Sherman a ticket to Cleveland and back, and no objection was made at that time as to his accompanying me.

Mr. Bowles, Jr.: And the State Bar has been paying Mr. Sherman's expenses to make that trip.

Mr. Stallard: Now, Your Honor, in reply to that, I hold in my hand a certified copy of the record in the case of *Georgia v. Byington*, which has been introduced. It is Byington Exhibit A, October 10, 1961.

In this case, Your Honor, a witness for the plaintiff came in here and testified under oath that Mr. Tom Lewis, Jr., [fol. 368] came to her house; tried to solicit her case. This record shows on direct examination and on cross-examination, that she testified under oath that she didn't know who the man was that came there from Atlanta, and they had indicted Mr. Lewis and not proessed the case. She came here—

Mr. Bowles, Jr.: Who is "they," please?

The Court: I beg your pardon?

Mr. Stallard: She came here—

Mr. Bowles, Jr.: He said, "they." I don't know who he means by "they."

Mr. Stallard: The State of Georgia.

Mr. Bowles, Jr.: Who is "they"?

Mr. Stallard: The State of Georgia not proessed the case. Your Honor, she came here and testified that she knew that Tom Lewis came to see her, Tom Lewis, Jr. She said she came here when the representative of the American Association of Railroads—and I would like to read Your Honor that testimony—I think it is a serious matter when a witness will testify under oath in Georgia that she doesn't know a man, and come here and testify just the opposite. Now, a representative of the American Association of Railroads brings her. I say that is a serious matter. I would [fol. 369] like to read that testimony. I think it is a very serious matter when the representative of the American Association of Railroads will associate himself with her, and she remembers the man's name when she didn't, under oath, in February of 1961, and I would like to read you that testimony.

The Court: One minute.

Mr. Bowles, Jr.: Which witness is this you are talking about?

Mr. Stallard: I am talking about Mrs. Queen. She was Mrs. Queen. She lost her husband.

Mr. Bowles, Jr.: I don't want to interrupt Mr. Stallard, but when he says "they," and "somebody," I would like to know who he is talking about.

Mr. Stallard: I would be glad to inform him.

The Court: Mr. Stallard, before you go ahead, Mr. Stallard, you are indicating perjury, I believe, at one time or another; is that right?

Mr. Stallard: The record will show she testified under oath here, and I have the record that has been introduced by the plaintiff. She testified she did not know the name, and I would like to read that to Your Honor.

The Court: What would be the result, the material out- [fol. 370] come of this case? What would you want the Court to do in that situation?

Mr. Stallard: I would not want Your Honor to do anything. My motion is not to let these records get in the hands of a representative of the Association of American Railroads, because I don't trust them. Here, a woman has

come and testified one way, and the representative brought her here. She remembered here, but she didn't remember a few months ago, testifying for Georgia State. I don't want to do anything other than not let these papers get in their hands. I don't trust them.

The Court: Well, may I suggest this: In the interest of speeding this case, the point that you are making now is already in evidence before the Court, and would be subject to argument. You are reading it back into the record. Now, would you just add to it?

Mr. Stallard: No, I just make that statement. I thought if anybody questioned it, I would like to read it, and I will use it in argument, but my motion, of course, is not to let my records get in their hands. I will turn them over to counsel. He can examine them, photostat them, do anything he wants.

The Court: Now, I have this suggestion: That we get [fol. 371] along as fast as we can, and I don't mean that I am in a hurry about the case. Let me make this comment. Certain parts of these records in question are recognized to be admissible in this case.

Mr. Stallard: No, sir, I have not conceded that. I have made a motion on all of these records. I do not think they are material to the issue in this case at all. We are charged with practicing law unauthorizedly in Virginia. I don't think what takes place in Georgia has a thing in the world to do with it.

The Court: I thought you made that motion which was overruled and your exceptions noted.

Mr. Stallard: Yes.

The Court: To put it another way, the Court has ruled that certain of these records that are now available are admissible.

Mr. Stallard: Yes.

The Court: Over your objection and your exception noted. Suppose they are admitted in evidence in this court, you are not suggesting that the Court keep his records secret, are you?

Mr. Stallard: No, sir, I am not, but I may, at a certain time, ask Your Honor to seal the records, and I don't know

[fol. 372] that. Your Honor would do that, or have the power to do that, but I would make the motion and save the point.

The Court: I believe it would take a good deal of time. Certain portions of these records you want to have in evidence; is that right?

Mr. Bowles, Jr.: Yes, sir, my impression at this time, sir, from having conferred on it very briefly this morning, that Mr. Bowles, III feels that all of these records are records admissible, and relevant and pertinent in this case, in response both to the call that was heretofore made last year, and also in response to the subpoena served upon Mr. Chase.

Now, he has already been through them, and it is his opinion expressed to me. When I say "he," I mean Mr. Bowles, III. We have talked very briefly in a two-hour session, and in his opinion, they are all pertinent.

The Court: You wish to offer them all; is that right?

Mr. Bowles, Jr.: Yes, sir, I do. Now I say to the Court, from the standpoint I am not burdening the record, if, when we have an opportunity to go through them care- [fol. 373] fully, there are some of them that appear not to be relevant, I would not care to burden the record with that, but I think they are very few.

Now, it is my impression that there are certain things here that relate to other departments in these records. If that should be so, I am not concerned too much with them.

The Court: You are interested in the Legal Department?

Mr. Bowles, Jr.: That is correct, sir.

The Court: Now called the Department of Legal Counsel; is that what you mean?

Mr. Bowles, Jr.: Yes, sir, and it is my understanding from the general review of those records on yesterday in Cleveland that these are the books that Mr. Nelson saw, and that they are similar records contained on into 1960, and those are, of course, the things I wish to put in.

The Court: I am not going to decide anything now, and I am not going to make decision. I am not going to decide it until I hear from you. Such original records as are introduced here may be withdrawn, and you have to have [fol. 374] copies of them left, under the statute.

Mr. Bowles, Jr.: I have already made arrangements with Mr. Warner to do that.

The Court: Arrangements to copy all of the records that have been brought back?

Mr. Bowles, Jr.: Yes, sir.

The Court: And how voluminous are they, how long will it take?

Mr. Bowles, Jr.: That, sir, I don't know. You can tell the Judge right now.

Mr. Bowles, III: There are four volumes, Your Honor.

The Court: Let me see them. That is all right. Now, I see what you mean.

Mr. Bowles, Jr.: And, perhaps, there may be some more loose-leaf sheets that will be coming.

Mr. Stallard: There are a great deal more.

The Witness: This bag is full of them, Your Honor.

The Court: It seems to me that a reasonable solution at this time—you are having photostats made of all of them?

Mr. Bowles, Jr.: Yes, sir.

The Court: They are ordered and will come soon?

[fol. 375] Mr. Bowles, Jr.: That is correct. I might say, if I am not interrupting the Court, that I think it would be rather useless to require Mr. Chase to just sit around here while that process is being done. If he will introduce these things and make them a part of the record, then the Clerk can go on and do his photostating. When that is done, the originals can be returned to Mr. Stallard.

Mr. Stallard: I will stipulate.

The Court: Isn't that a reasonably fair suggestion, and all that the Court can do; if it isn't, I will hear from you further. You have ordered photostats of all of the records?

Mr. Bowles, Jr.: Yes, sir.

The Court: You have intimated that perhaps some of them will not be offered.

Mr. Bowles, III: My examination, of course, was in a brief period of time. I was attempting to get back here by ten o'clock this morning. I only saw one letter in this file which was not pertinent to this, and we discussed that out there, and I think everybody agreed it wasn't pertinent. Whether that letter was brought or not, I don't know.

The Court: I was merely taking what Mr. Bowles, Jr.—
[fol. 376] I call him Junior because he is Senior.

Mr. Bowles, Jr.: It produces a great deal of confusion, sir.

The Court: I understand, which the Court shares.

Mr. Bowles, Jr.: Well, the simple remedy for that in my office is to refer to it as the "old man," and the "young man."

The Court: I will adopt that, if you wish. I am trying to get a reasonably human solution of this. I don't want to delay the case, and I don't want to hurry the case. It is certainly possible, in view of your statement that after you have an opportunity to examine more closely, some of these will be offered in evidence, and some will not.

Mr. Bowles, Jr.: That is so; that is possible.

The Court: Allright.

Mr. Bowles, Jr.: At this time, I would like to offer them all, subject to taking out those that are not relevant.

The Court: I don't know that that is necessary. The original records are here, subject to use in this court. Photostatic copies have been ordered, and are in process of being made. Until we know when and where and how we are going, is it not practical to proceed to introduce such of [fol. 377] them as you wish to introduce, the originals? And until we know what we are doing, whether or not they are all admissible; I don't see how I can prevent them from being open to the public. I am not deciding that, sir; I will hear you.

Mr. Stallard: Yes, sir.

The Court: Now, during that process, until we just know where we are going, isn't it reasonable and proper for the Court to direct the Clerk that these original records are not open to inspection by anybody, but counsel?

Mr. Bowles, Jr.: Oh, sure, yes. I wasn't trying to intimate that we want to turn it loose for publication until they are part of this record, and I am not trying to turn it loose then.

The Court: And then we will take that up after we know what is coming in, and what is not, if there is any difference.

Mr. Stallard: I think we understand.

The Court: Then we will take up what disposition is to be made of the original records, and of the photostats. We will have to take it up then.

Mr. Bowles, Jr.: Well, I had in mind this morning, of asking Mr. Chase to point out and describe and identify [fol. 378] as far as he can, these things that he has brought back, and then we will know what we are talking about.

The Court: I hope so.

Mr. Bowles, Jr.: I think so, sir; at least, I hope I will, because I haven't seen them yet. But then the suggestion I made to the Court was that while this copying process, so that they could remove the ones that you have admitted into evidence, was going on, I didn't see any point in trying to—again, I am trying to accommodate Mr. Chase—of his sitting around here waiting until that had been done.

The Court: Well, the Court wishes to do what it can, within reason, to accommodate Mr. Chase.

Now, ask Mr. Warner to come in, please.

Mr. Bowles, Jr.: Now, there is one other matter, sir, or two other matters.

The Court: May we dispose of this first, and then take those up?

Mr. Bowles, Jr.: Well, this is part of this same thing.

The Court: All right.

Mr. Bowles, Jr.: At the time of this visit for the purpose of identifying these things, a reporter was provided, and a stipulation made, as I understand it, that everything that transpired while these records were being examined, looked at and examined, on yesterday, the persons involved and the individuals, everybody was sworn, and a reporter took that down, and that would be a part of the proceedings in this case, as if it had transpired here.

The Court: Very well.

Mr. Bowles, Jr.: Now, I am informed by the reporter, that that cannot possibly be transcribed by him for a period of about ten days or maybe two weeks. It will come here, and the people who made some of these records, have made statements under oath concerning the preparation of them, and what they mean. That has been taken down, sir, and is now in process of being transcribed by a court reporter in Cleveland. I wish to offer that as if it were a deposition

taken, that will come on at the appropriate time, as soon as it can be sent to the Clerk under seal of that reporter.

The Court: Any comments on that, Mr. Stallard?

Mr. Stallard: No, sir, no comment.

The Court: Mr. Warner, Clerk of the Court, I have asked [fol. 380] you to come in.

The Clerk: Yes.

The Court: Because we are now going to introduce in evidence certain original records of the defendant Brotherhood and specifically of its Legal Aid Department, or Department of Legal Counsel.

Mr. Bowles, Jr.: That is correct, sir.

The Court: Mr. Bowles has told me that he has asked you to make copies of all of these records, and that is in process of being done. We wish to proceed with the case, to introduce those records at this time.

The Clerk: Yes, sir.

The Court: Mr. Chase, the general secretary-treasurer of the defendant Brotherhood, is here under summons, and the Court, and Mr. Bowles also, does not wish to detain him any longer than necessary, so the Court is now instructing you to proceed with the photostating and the records that are introduced. They will now be held in your custody, and until the further order of the Court, if need be, they will not be subject to inspection by anybody except counsel in this case: Mr. Bowles, Jr., Mr. Bowles, III, and Mr. Stallard, to be specific. Nobody else can look at these [fol. 381] original records.

Mr. Bowles, Jr.: That's right, sir.

The Court: And you be careful in the photostating, to see that there is no exception.

The Clerk: Yes, Judge.

The Court: I mean even in your office, beyond what is necessary.

Mr. Bowles, Jr.: Now, Your Honor, I have asked Mr. Warriner when he makes a copy for introduction by the Court, that he also make one for me, so I won't have to be running up and down this hill.

The Court: What we ought to do with your copy will be subject to future order, too.

Mr. Bowles, Jr.: I understand, sir, that is why I reminded you of that now.

The Court: The copies that you have, one copy will be in the custody of the Court.

Mr. Stallard: Oh, yes; I would like to have a copy.

Mr. Bowles, Jr.: So he will make three copies, one for the Court and one for each of us.

The Court: There will be two copies when you photostat, in addition to the original for the Court; one for Mr. Bowles, and one for Mr. Stallard. The copies that are [fol. 382] furnished Mr. Bowles and Mr. Stallard are on loan to them, subject to the order of the Court.

Mr. Bowles, Jr.: That is correct, sir, we understand.

Mr. Stallard: Yes, sir.

The Court: It seems to me that that is a practical solution.

Mr. Bowles, Jr.: That, I understand, pertains in the interim until the things are introduced in evidence, and until such time as you make whatever order you like?

The Court: It continues until further direction of the Court.

Mr. Bowles, Jr.: That is correct, sir; I understand. Now, as a practical matter, again, Your Honor, fully recognizing the rules of this Court, I am wondering if it wouldn't be more simple if Mr. Bowles, III could be substituted for me, for the mere purpose of asking Mr. Chase to identify these things, so that we can offer them, because I haven't seen them yet. He was there. He knows what they are. He can ask intelligent questions, and I can't.

Mr. Stallard: I think we can stipulate that.

[fol. 383] The Court: I know of no rule against that. I know of no rule of Court against that.

Mr. Bowles, Jr.: I thought you could only have one counsel examining one witness.

The Court: This is examination by counsel, and this is an adverse witness. You have no objection?

Mr. Stallard: No, sir, I can stipulate and read what I think it is, and we can just stipulate these.

Mr. Bowles, Jr.: I would think it would be more simple what I want to do; this witness is here under subpoena to

bring records. Now he has brought them. I would like to introduce them through this witness as exhibits so-and-so, Chase No. so-and-so.

Mr. Stallard: Now, Your Honor, that is true, they are from his department, but this one, I brought, and Mr. Chase did not bring these records. I brought them, myself, kept them with me. Mr. Chase was present with Mr. Bowles, III on another floor of the building, so he would just know—he was present and saw me get them from Mr. Maher, so I will stipulate these are the papers that we got.

The Court: It would be an appropriate thing for you to testify to.

[fol. 384] Mr. Stallard: No, sir, I don't want to testify.

The Court: I mean on that point, there is no objection to a lawyer testifying.

Mr. Stallard: No, I wouldn't want to testify under certain rules.

The Court: Mr. Chase knows these records were taken out of that office, that would be sufficient.

Mr. Bowles, Jr.: I would think so.

Mr. Stallard: Well, I didn't want to leave the impression they were his records. They are not. He has his records.

Mr. Bowles, Jr.: I don't think it is necessary. The records are already clear that he is the general secretary and treasurer and so forth and so on. I don't think we need go back all over that.

The Court: We are dealing with a lot of staff, Gentlemen. Mr. Chase, if you are aware that these records were taken from what we may call the central office of what was the Legal Aid Department, and is now the Department of Legal Counsel, your testimony to that effect will be accepted.

The Witness: Yes, sir.

Mr. Bowles, Jr.: He knows they came from Mr. Maher's office.

[fol. 385] The Court: That is just what I said.

Mr. Bowles, Jr.: Yes, sir, I just identified the name, the chief clerk, Maher.

Now, do you know what the last exhibit was for Chase?

Secretary of the Court: The last exhibit was Chase A and Chase B, the subpoena duces tecum, and the summons, so this would be Chase C.

Mr. Warriner: May I make copies as they are introduced?

The Court: I think they are going to enter all of them. That would be subject to objection, and exception. I am not going to keep those in the courtroom. It would be my responsibility, those that are admitted in evidence. No, let me correct that, all of these records are subject to the instructions that I have just given you about inspection.

Mr. Warriner: Yes, Judge.

The Court: So they would be—I will take the responsibility of handling those myself, and I will not have to keep you in the courtroom.

Mr. Warriner: All right, Judge.

[fol. 386]

INTRODUCTION OF PLAINTIFF'S CHASE EXHIBITS NO. C THRU L
WITH COMMENTS OF BOTH PARTIES

By Mr. Bowles, III:

Q. Mr. Chase, I hand you a book marked Book No. 1. It is a letter-type book. I believe inside somewhere is the title, "Membership and Registry System of the Brotherhood of Railroad Trainmen."

The Court: A little bit louder, please.

By Mr. Bowles, III:

Q. "Membership and Registry System of the Brotherhood of Railroad Trainmen," and this book, I believe, was obtained from Mr. Maher, C. B. Maher's office, on October 12, in Cleveland?

A. It doesn't state that, Mr. Bowles.

Q. No, but from your own knowledge?

A. It states "The Investigation Expenses."

Q. "Investigation Expenses," the statement and title is up here, membership—

A. Well, that is the form of the book used, but—

The Court: A little louder, please.

A. (Continuing) It is the form of the book used, Your Honor, like any type of ledger, but at the top, it says, "In-

vestigation expenses," which I think is the record. I never saw them before yesterday.

The Court: You do know that they came from Mr. Maher's office?

[fol. 387] The Witness: Yes, sir, that is correct.

The Court: The answer to the question is yes. The book will be identified by the Court, as a matter of course.

Mr. Bowles, III: As Chase Exhibit C.

The Court: Wait a minute, please. This is Chase Exhibit C.

(Chase Exhibit No. C, a ledger, was identified and filed in evidence.)

Mr. Bowles, III: I hope Your Honor will excuse me, if I am a bit foggy today.

Mr. Stallard: I tell Your Honor, we got in at three o'clock this morning.

The Court: I am going to endeavor to identify these in a way that the tab will be removed and the book will not be mutilated. Plaintiff's Chase Exhibit C is identified and filed.

Mr. Bowles, Jr.: Now, just a minute. What is our system now, Your Honor? Are we going to wait to offer them and have the Court rule on them?

The Court: You are offering them now.

Mr. Bowles, Jr.: We are offering them now.

[fol. 388] The Court: This is admitted in evidence.

Mr. Stallard: Yes, sir.

Mr. Bowles, Jr.: I see.

By Mr. Bowles, III:

Q. Now, I hand you, Mr. Chase, a similar book to Chase Exhibit C, but marked "Book No. 2."

A. That's right.

Q. You identify that as having been obtained from Mr. C. R. Maher of the office?

A. Yes, sir, I do.

Mr. Bowles, III: I offer this in evidence as Chase Exhibit

D.

The Court: Plaintiff's Chase Exhibit D is identified and filed.

(Plaintiff's Chase Exhibit No. D, a ledger, was marked and received in evidence.)

By Mr. Bowles, III:

Q. Mr. Chase, I hand you a similar volume as Chase Exhibit C and D, this volume being marked Book No. 3. Can you identify this as having been obtained from Mr. C. R. Maher's office?

A. That is correct.

Mr. Bowles, III: I would like that marked Chase Exhibit [fol. 389] E, if Your Honor please.

The Court: Plaintiff Chase Exhibit E, identified and filed.

(Plaintiff's Chase Exhibit No. E, a ledger, was marked and received in evidence.)

Mr. Bowles, Jr.: You are both still whispering. Try to scream, if you will, and then maybe we will hear you.

The Court: He is doing all right.

Mr. Stallard: We are mighty tired. We were up twenty-one hours.

The Court: The Court has every consideration for you.

Mr. Bowles, Jr.: You remind me of coo-coo clocks that are about to run down.

The Court: What?

Mr. Bowles, Jr.: They remind me of coo-coo clocks that are about to run down.

The Court: I think they are doing very well, better than you would have done if you had gone.

Mr. Bowles, Jr.: I wouldn't have done as well.

By Mr. Bowles, III:

Q. Mr. Chase, I hand you a brown and motley white and [fol. 390] black ledger sheet, or book, that I believe was obtained from Mr. Maher's home, and brought in by his wife on yesterday, and delivered into your custody, and Mr. Stallard's custody, as being the records of payments re-

ceived from various regional counsel for certain numbers of years?

A. That is correct.

Q. Can you identify this book, and would you file it with your testimony as Chase Exhibit F?

A. Yes, sir.

The Court: Chase Exhibit F is identified and filed.

(Plaintiff's Chase Exhibit No. F, a ledger, was marked and received in evidence.)

By Mr. Bowles, III:

Q. Mr. Chase, I hand you a manila type folder file marked 1958, deposit slips containing a number of letters; can you identify this as having been produced by Mr. C. R. Maher on October 12?

A. Yes, sir.

Q. Would you file this with your testimony as Chase Exhibit No. F—rather, G?

The Court: Chase Exhibit G, identified and filed.

[fol. 391] (Plaintiff's Chase Exhibit No. G, letters and deposits, were marked and received in evidence.)

By Mr. Bowles, III:

Q. Mr. Chase, I hand you a manila folder with the title on it, "1959 Deposit Slips"; can you identify this as having been produced by Mr. C. R. Maher in his office on yesterday, October 12?

A. Yes, sir.

Q. Would you file that as Chase Exhibit H with your testimony?

The Court: Plaintiff's Chase Exhibit H, identified and filed.

(Plaintiff's Chase Exhibit No. H, deposit slips, was marked and received in evidence.)

The Court: Exhibits G and H are placed by the Court in envelopes with the identification outside.

By Mr. Bowles, III:

Q. Mr. Chase, I hand you another manila folder with the title on it, "1960 Deposit Slips"; can you recognize this as being an exhibit produced by Mr. Maher on yesterday?

A. Yes, sir.

Q. Would you file that as Exhibit I with your testimony, [fol. 392] please?

The Court: Plaintiff's Chase Exhibit I is identified and filed, placed, in a similar manner, in an envelope.

(Plaintiff's Chase Exhibit No. I, deposit slips, was marked and received in evidence.)

By Mr. Bowles, III:

Q. Mr. Chase, do you have with you the payroll records of your department, the general secretary and treasurer, representing all payments made to all employees of the Department of Legal Counsel, and the Legal Aid Department, as well as regional investigators back to a date which is the date that your men working last night were able to get back that far, in order for us to get out of Cleveland?

A. Yes, sir, this black ledger is our office records.

Q. How far back does that go, sir?

A. I am just looking to see what the dates are. Apparently, they go back—the office expenditure goes back from the year 1956 to date, which my auditors told me were the only records we had available at the present; and the investigators' payments evidently are from the same period, from 1956 to date, I believe. On that to date, Your Honor, [fol. 393] 1956 to 1960; there were no further payments made after April 1 of 1960 to any investigator.

The Court: Did you mean, or is it a slip of the tongue, did you mean '60 or '59?

The Witness: With respect to the investigators, Your Honor, it is '60. In other words, as I understand it, under the Illinois Supreme Court decision, we could hire investigators, and we did in these records, and the records will prove it; and incidentally, these are our ledger records that we have, and the only ones we have to supply to our

auditors and to our convention, and to the Federal Government, in response to the Landrum-Griffin Bill, in case we are questioned on them. These are important, as far as our books are concerned. But after the so-called magic date, as I gather, any payments from counsel were cut out and the records will so show, but when we did hire by the Brotherhood, there were payments made to investigators up until April, 1960, and since that time there have been no payments made.

Mr. Bowles, Jr.: Well, now, Your Honor, the office expenditures in here in the first portion from 1956, I think he said, to date, because they still pay the office expenditures, but the investigators in this book only go from [fol. 394] '56 up until April, I think it is, 1960. My inquiry was that when Mr. Chase said here on Wednesday that he knew nothing about this, I assumed that he has acquired that information. He has just been telling about between that time.

The Court: The information that he has given is obtainable, I believe, upon inspection of the books.

Mr. Bowles, Jr.: I just wanted to get that clear.

The Court: And it was, in a sense, unnecessary. He has undertaken to give a reason why it stopped. It was in response to the Court's question, I thought.

Mr. Bowles, Jr.: I understood that, sir.

The Court: I thought it was a slip of the tongue, on his part, and I asked him. I think his answer is appropriate.

Mr. Bowles, Jr.: I understand the record speaks for itself, but the explanation is what I was getting at. I take it from both what you said and what he says, that it is derived from the book, itself.

The Court: The dates derived from the book itself.

Mr. Bowles, Jr.: Yes, Your Honor, but all of that other information he gave about what they did under the Illinois [fol. 395] decision and what they didn't do under the Illinois decision in the Legal Aid Department, I would take it would not appear from the book, itself.

The Court: That would not appear.

Mr. Bowles, Jr.: And I wonder where he got that information, because he testified here on Wednesday that he didn't know anything about this department.

The Court: I think that you have put rather an extreme interpretation upon Mr. Chase's evidence Wednesday. As I understood it, he was not custodian of these records. That was his evidence, and he knew nothing of the details of the records. His explanation now is, it deals with the policy, with the construction that they placed on the Illinois decision, and if it is objectionable at all, I would think that it would make a point as a legal opinion, Mr. Chase practicing law in Virginia.

Mr. Bowles, Jr.: Well, sir, I had his testimony on Wednesday written up, and I read it carefully last night, and I will not pursue the point any further at this time.

The Court: I understand.

Mr. Stallard: Your Honor please, I would like to reply. [fol. 396] The Court: If I am wrong, you will direct me in due course. That is the present rule.

Mr. Bowles, Jr.: Yes, I will have that opportunity on the record.

The Court: Of course, you will.

Mr. Stallard: Your Honor, may I be permitted to reply to Mr. Bowles' statement? We sat for a couple of hours yesterday and heard the testimony of the chief clerk and also of his secretary concerning what they had done, and the evidence was, and it is being written up, that the investigators were cut off in 1960, the legal counsel is cut off in 1959, and the evidence of the president of the Brotherhood also corroborates that, and I don't know whether Mr. Chase got it from that evidence or whether it is in the book, sir. I know I heard it.

The Court: The answer will stand subject to re-examination at a future time, if need be.

Mr. Bowles, Jr.: I just wanted to point that out. We don't think the records do show that.

The Court: You have said that.

Mr. Bowles, Jr.: I want to point this out. We don't think the records show what he has just said. They show the contrary.

[fol. 397] The Court: You want to introduce this?

By Mr. Bowles, III:

Q. I wanted to ask him one question further. Mr. Chase, I believe it is correct that your auditor is making an attempt to further look back into your records, and if he discovers more records, or is able to compile more records, you have authorized him to send them in, registered mail, return receipt requested, to the Clerk of this Court?

A. That's right, if there are any further records available, why we stipulated that we would do our best to see that the Court gets them.

Q. Now, would you introduce that, please, Mr. Chase, as Exhibit No. J with your testimony, please?

A. Yes, but I would like to, in my testimony, in entering this exhibit, I would like again to reiterate that these are my records from my department over which I have control and know something about, and I again stipulate to the Court that insofar as these records are concerned, the first part of them involved the payment to the former Legal Aid Department and the now Department of Legal Counsel office of the Brotherhood of Railroad Trainmen, from the period 1956 to date.

The second portion of it is my office record on payment, and our ledger record of the Brotherhood of Railroad [fol. 398] Trainmen on payments made to investigators from, I think it is the year 1956, up until April, 1960, and that is all the records we have, sir.

Q. Now, Mr. Chase, then I believe it was stated that these investigators and the personnel of the Legal Aid Department actually in the Standard Building in Cleveland were the only employees of the Legal Aid Department at any time, and that these records represent the payroll records of all employees, regardless of who they are, or what they do, of the Legal Aid Department; is that not correct?

A. You will have to ask that again. I missed the first part of it.

Mr. Bowles, III: Would you read it back, please?

(The court reporter read Mr. Bowles, III's question back.)

A. To my knowledge, that is true, sir.

By Mr. Bowles, III:

Q. Would you file that as Exhibit J, Chase J, with your testimony, please?

The Court: Plaintiff's Chase Exhibit J, identified and filed.

(Plaintiff's Chase Exhibit J, a ledger, was marked and [fol. 399] received in evidence.)

By Mr. Bowles, III:

Q. One other question, Mr. Chase, that exhibit, Chase J, was also obtained on yesterday, was it not?

A. Oh, yes, sir, it was obtained from our office.

Mr. Bowles, Jr.: Now, Your Honor, may I interject once more in the hope of trying to be cooperative. I gathered; and I understand, I think correctly, that this is a current record of this defendant, and I would suggest that that record be handed to the Clerk right now and let him start to photocopying it, and it may be that he, since it is current, that he would want to do something about it. He would want to take it back as soon as he could. If I am incorrect in that, sir, I would like to be so informed, but it is my understanding that that is up to date.

By Mr. Bowles, III:

Q. It is up to the 29th of September, I believe, is it not, the last day of September?

A. Insofar as the office expenses are concerned, I believe it is. It is right up current to date, insofar as the investigators, as I said before, I think they stopped any payments made to them from the Brotherhood, stopped in [fol. 400] April of 1960. I don't think that is locked, Your Honor. Your Honor, I think they just put it in there. It was put in that ledger.

The Court: I am examining the book, to see if it can be taken apart without a key; only it obviously requires a key to be inserted in the lower lefthand corner. You have the key with you?

The Witness: I didn't know it was locked, sir. They just put it in those binders, but those come out of your records in innumerable binders. Those are just sheets taken out of our daily ledger accounts in the office.

Mr. Bowles, Jr.: Again, if I can stick my neck out, sir, I think any small seat key will open it.

The Court: Do you have one with you?

Mr. Bowles, Jr.: No, sir, I haven't got one.

The Court: Well, I only wanted one.

Mr. Bowles, Jr.: I can send to my office and get one.

The Court: Counsel, come into my office, please.

(The Court and counsel left the courtroom, and upon returning, the following occurred:)

The Court: Counsel informs me that the plaintiff's [fol. 401] evidence will be completed shortly, and that the defendant's evidence will be brief. This statement is subject to two qualifications. On behalf of the plaintiff there are certain documents on the way to the Court.

Mr. Bowles, III: That is correct, Your Honor, and I also believe that the statement was made to me yesterday, that all of them that were available would be mailed not later than October 18, the evening of October 18.

The Court: The defendant will close his evidence with a qualification that he may wish to procure and place in evidence certain exemplified copies of court proceedings in Virginia. The Court is aware of and accedes to the qualifications of the testimony being closed with this proviso.

Mr. Bowles, III: If I may interrupt, Your Honor, there is one other item coming, and that is the transcript of all the conversation under oath that went on in Cleveland yesterday, as to the production of these documents.

The Court: That is a stipulation, I should include that, on behalf of the plaintiff in my statement.

Mr. Bowles, III: Yes, sir.

[fol. 402] Mr. Stallard: Your Honor, I would like to put on one witness, if he gets here, Mr. Hugh, and he said he would be here at eleven-thirty. If he doesn't, I won't put him on, of course.

The Court: Today!

Mr. Stallard: Today, that is.

The Court: That is in five minutes. If he comes in five minutes, we will hear him.

Mr. Stallard: Give him a few more minutes. He is coming in a cab. All right, go ahead.

The Court: Now, the Court understands and accedes to the stipulation with this proviso: That no further evidence will be admitted after the decision of this case is announced from the bench.

Mr. Bowles, III: That is correct.

Mr. Stallard: That is correct. Of course, I want to put in some motions at the end of his testimony. I have got some written motions, just for the record.

The Court: Oh, yes, I understand.

Mr. Bowles, III: I expected that, Your Honor.

(Discussion off the record.)

By Mr. Bowles, III:

Q. Mr. Chase, in confining myself now totally to rec- [fol. 403] ords produced on yesterday, October 12—and I am not asking you questions now about the records that you originally brought down here with you—I believe that you have with you today, that were gathered on yesterday, the originals of the auditor's reports from 1950 to date; is that correct, sir?

A. No, that isn't correct, not to date, because the audits are yearly.

Q. Well, through 1960, then?

A. These are the Ernst and Ernst audits of our complete organization from the year 1950 through 1960.

The Court: Are they originals or copies?

A. (Continuing) Originals, Your Honor,

By Mr. Bowles, III:

Q. Will you take, Mr. Chase, the audit of 1950—

The Court: Mr. Bowles, is it feasible to introduce all of these as one exhibit?

Mr. Bowles, III: Well, I was hoping, sir, that I could identify the particular page of this audit that has to do with the Legal Aid Department, and therefore save the Court and myself, the burden of putting all of this in.

Mr. Stallard: I concur, Your Honor, because it involves a great deal of insurance business and many other aspects [fol. 404] of the Brotherhood of Railroad Trainmen, and there is only one page pertaining to that, and I concur with that.

Mr. Bowles, III: And I was going to ask the witness to identify in each of the audits, 1950 through 1960, that page pertaining to the Legal Aid Department.

Mr. Bowles, Jr.: In other words, I understand, sir, we will put in the entire exhibit and have that one page photostated, photocopied?

Mr. Bowles, III: That is correct.

The Court: That can't be done as a group?

Mr. Bowles, Jr.: Well, he had in mind, I think, was to do like we did before, to give this exhibit as K-a, -b, -c, -d, and -e, by the year.

Mr. Bowles, III: K-1950, K-1951.

The Court: If you prefer that way, I am not going to dictate on that. Mr. Stallard is rising ready to stipulate anything you want.

Mr. Stallard: We stipulate that page. Let the secretary take it right into the record, that particular page.

Mr. Bowles, Jr.: We would rather have it accompanied as an exhibit, but we would like to mark it so that we can get simple identification, 1950, a, and 1951, b.

[fol. 405] The Court: That can be done in stipulation, Gentlemen?

Mr. Bowles, Jr.: That's right.

The Court: Now, I am not insisting on this, but why can we not have a stipulation that the audits, that the following pages are taken from the audits, something like that, 1950 audit, page so-and-so, K-1?

Mr. Bowles, Jr.: That's right; that is what he was going to do by a simple answer to the question.

The Court: A stipulation. I am sorry I took up so much time. I apologize.

By Mr. Bowles, III:

Q. Have you found that page?

A. Yes, sir, it is page or—wait a minute—it is, well, there are no page numbers. It is schedule No. 22 in the 1950 audit. That is the 22nd item, Your Honor.

The Court: A photostatic copy of that will be received in evidence as Plaintiff's Chase Exhibit K, 1950.

(Plaintiff's Chase Exhibit No. K-1950, was marked and received in evidence.)

Mr. Bowles, Jr.: Right.

[fol. 406] Mr. Bowles, III: That would be most agreeable, Your Honor.

Mr. Bowles, Jr.: Your Honor, to show my heart is in the right place, let me just designate it seems to be the answer, just like you said.

The Court: I am gratefully surprised, but I am very glad to have it done that way.

By Mr. Bowles, III:

Q. On the 1951?

A. In 1951, it is also known as Schedule No. 22.

The Court: And that will be K-1951, identified and filed, a photostat of that page.

A. Yes, sir.

(Plaintiff's Chase Exhibit No. K-1951, a schedule, was marked and received in evidence.)

The Witness: I believe, Your Honor, I will check them, but I believe that Schedule No. 22 in all of these audits, is the only page that refers to the Legal Aid Department; but I will check, just to make sure.

The Court: As you go through, please do, sir.

A. (Continuing) 1952, it is also Schedule No. 22.

The Court: All of these will be introduced as Plaintiff [fol. 407] Exhibit K, followed by the year.

A. (Continuing) I guess I made a mistake here. In the year 1953, it is Schedule No. 24. In 1953, the page—

Schedule No. 24. In the year 1954, it is Schedule 24. In the year 1955, it is Schedule No. 24.

The Court: I am just completing '54 now.

A. (Continuing) Are you ready for 1956, Your Honor?

The Court: '56 is the next one.

A. (Continuing) In the year 1956, it is Schedule No. 24. The year 1957, it is Schedule No. 24. The year 1958, it is Schedule No. 24. The year 1959, it is Schedule No. 24. The year 1960, it is Schedule No. 25.

The Court: I believe we have these in order except for the photostating.

(Plaintiff's Chase Exhibits Nos. K-1952, K-1953, K-1954, K-1955, K-1956, K-1957, K-1958, K-1959, and K-1960, being schedules, were marked and received in evidence.)

Mr. Bowles, III: Again, perhaps if Mr. Warriner, the Clerk, could begin on this, Your Honor, Mr. Chase might be able to return these to Cleveland with him when he goes back.

[fol. 498] A. (Continuing) Here is a synopsis, if you want to check it. I have already done it for you.

Mr. Bowles, Jr.: But that will not be a photocopy.

The Witness: Sir?

Mr. Bowles, Jr.: But that will not be a photocopy.

Mr. Bowles, III: We have ordered photographs taken, of it.

The Witness: It is a sworn copy. I can swear to it.

Mr. Bowles, Jr.: That is something the Clerk can't do, and I will have to sit down and check those.

The Witness: We will give you these.

Mr. Bowles, Jr.: Well, I would be very pleased if you would.

The Witness: In other words, this one, I would be glad to give the Court and the opposing counsel. This is the synopsis from 1954 to date, showing exactly the records that are in there, the operation and expense of the department and up until 1960 and 1961, it shows that those

two departments have been in the red as a result of no contributions to the tune of \$85,000 and some odd cents, [fol. 409] which are being defrayed by the general fund of the Brotherhood.

The Court: There are eleven audits here?

The Witness: I think it would be eleven, 1950 through 1960 would be eleven.

The Court: How many copies do you want the Clerk to make of these, Mr. Bowles?

Mr. Bowles, Jr.: I reckon you want one.

Mr. Stallard: No, I don't believe I care for those.

Mr. Bowles, Jr.: Just two.

The Court: An original for filing, identifying, and one copy for Mr. Bowles, and that ought not to take over three-quarters of an hour.

Mr. Warriner: That is right.

The Court: Have you a reservation?

The Witness: Sir?

The Court: Have you a reservation to go back?

The Witness: Yes, sir, I have, if it please the Court and the counsel, I have reservations for 4:15.

By Mr. Bowles, III:

Q. Mr. Chase, my questions are still now only in reference to those pages produced in Cleveland yesterday on October 12. What other papers did you bring with you, [fol. 410] produced on yesterday?

A. That is all I brought, was this synopsis.

Mr. Bowles, Jr.: That is day before yesterday.

By Mr. Bowles, III:

Q. Those synopses that you are referring to, did you not bring those originally, when you came here on October 9th?

A. Yes, sir.

Q. My question refers to what other papers or documents or records that you have with you now that you got on yesterday, October 12, in Cleveland?

A. That completes them, I believe.

Mr. Bowles, Jr.: I would like to get identified in some way through this witness, and he knows better how to do it than I or Mr. Bowles, III, as to what is coming, that the people out there are going to send to the Clerk under seal and registered mail.

The Court: I believe I endeavored to cover that in conference, Mr. Bowles. Mr. Bowles, III will tell you whether it is accurate or not.

Mr. Bowles, Jr.: I didn't hear either one of you, sir. I am sorry.

The Court: I know there is noise outside, and nobody is to blame.

[fol. 411]. Mr. Bowles, Jr.: I am not trying to blame you, Judge.

The Court: I understand.

Mr. Bowles, Jr.: I don't know where you get that idea.

The Court: While you were out in conference and Mr. Bowles listening carefully, I intended to cover what is on the way and to be received in evidence on your side, provided it gets here before the decision is announced.

Mr. Bowles, Jr.: Well, sir, I don't want to submit it for decision unless the stuff that is coming from Cleveland does get here.

The Court: I am not going to decide it before it is submitted.

Mr. Bowles, Jr.: I understand.

Mr. Stallard: I would like—

Mr. Bowles, III: I did want to, in a little more detail with Mr. Chase, pin down what is coming. I won't take but just a moment.

A. Mr. Bowles, I don't know. You made those arrangements with the clerk.

By Mr. Bowles, III:

Q. You were present when those arrangements were [fol. 412] made.

A. Some of those I was, and some I wasn't.

Q. It is adequately covered in the testimony.

Mr. Bowles, Jr.: Well, if so, okay. I wasn't there, thank God, and I don't know.

Mr. Bowles, III: If Your Honor please—

Mr. Bowles, Jr.: Now that doesn't have anything to do with Mr. Chase.

Mr. Bowles, III: Not at all, but at this time, I would like to introduce as Plaintiff's Exhibit No. 82 a document consisting of three pages entitled "Changes in legal counsel since October 1949." This is a document that we requested that the president of the Brotherhood have prepared when we took his deposition in Cleveland on June 1 of this year, and it was given to me in Cleveland by Mr. C. R. Maher on behalf of the president on yesterday, and I would like to introduce it at this time.

The Court: Mr. Stallard was present, was he not?

Mr. Stallard: Yes, I gave him that. I have a copy of that. I don't have a copy for anybody but myself. I just wonder if you could get that photostated and send it back? [fol. 413] - The Court: This is Plaintiff's Exhibit 82.

Mr. Bowles, III: That is correct, sir.

The Court: What is it—changes in legal counsel?

Mr. Bowles, III: Consisting of three pages, typewritten document.

(Plaintiff's Exhibit No. 82, changes in legal counsel, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Mr. Chase, I have a couple of questions related to the other matters that I wanted to ask you. I want to get it clear in my mind, if I understand this situation correctly: That now, in the year 1961, do I understand that the Legal Aid Department is being supported out of the general fund of the Brotherhood?

A. It has been supported out of the general fund of the Brotherhood since April, I think—what was that magic date you referred to—April 1, 1959?

Q. How was it, did the general fund enter into it at all prior to that time?

A. I don't know what you mean by that question.

Q. I mean this: If it cost "X" dollars to operate the fund and the contributions were insufficient, where did the deficit come from prior to the magic date?

A. As I understand it, Mr. Bowles, prior to April 1, 1959, the department at that time was called the Legal Aid [fol. 414] Department, and since, I think it is January 1, 1959, it has been the Department of Legal Counsel. Prior to that April 1, 1959, it was supported, as I gather, from the contributions of the counsel, and it had nothing to do with our general fund.

Q. Well, you, as I understand in this situation, had the lump sum figures transferred over to your office.

A. Yes, sir.

Q. For the Legal Aid Department?

A. In those three envelopes you will see, and that is the only one, they tell me, that they have where they transferred those lump-sum payments to us without any notations for the credit of the Legal Aid Department.

Q. I understood that in your testimony on last Wednesday. That is the reason I insisted on going into the details of the Legal Aid Department, itself. Now, in those years, your records would show whether there was a profit or loss in the operation of it, by virtue of contributions?

A. That shows in those books that you have there.

Q. That is what I am getting at. Now, that would show?

A. Not in the Ernst and Ernst account. I don't know whether you offered it as an exhibit or not, but in this sheet that I brought with me, involving the expense in the records [fol. 415] of the Legal Aid, Legal Aid Department, from 1954, this is our own record. This shows exactly from Ernst and Ernst records, the status of the Legal Aid Department, and it shows in these two years, as I told you, that in the year 1960 the department was \$55,701.21 in the red. At the end of 1961, the department is \$85,445.96 in the red.

The Court: You said the end of '61?

A. Yes, sir.

The Court: You mean to-date in '61?

A. Yes, sir, that is the office, Your Honor, in Cleveland, that department. We still have a department in Cleveland that does this.

The Court: I am just saying you spoke in answer to the end, that the deficit or in the red at the end of '61.

A. I am sorry. I meant up to date.

The Court: Yes.

By Mr. Bowles, Jr.:

Q. Well,—

A. Prior, I will explain this to you.

Q. I am not saying this critically, but you are just like the hare, and I am the tortoise. You have gone on a long period. I was talking about prior to the magic date, and you have gone off now talking about '61. I want to get [fol. 416] to that later.

A. Prior to '59, the department was self-sustaining.

Q. Well, still, you haven't got to the point that I have asked you. Do you remember records in your office show whether or not it made a profit?

A. No, those are the records. You have them there.

Q. Well, what records does your office, the treasury department, show whether or not in those prior years, prior to the magic date, two things: First of all, whether it was a profit or a loss, and I understand you have said it was self-sustaining; and if there was a profit, what happened to the profit?

A. Mr. Bowles, I am trying to be explicit as possible.

Q. I am sure you are, but we don't seem to understand one another.

A. Those records are contained in Ernst and Ernst.

Q. Now, when you say "those records," what are you talking about?

A. What you are asking me about.

Q. What records are they when you say "those"?

A. From 1950 to 1960, the ones that the Judge just put down from our Ernst and Ernst audit. It showed that any surplus that was carried over from one year to the other, [fol. 417] was absorbed the following year, and, as I understand it, I don't know—I understand that the counsel were taxed commensurate with the expense of the office up to 1959, and past 1959 it has been supported by the general fund. Prior to that time, the regional counsel supported it.

Q. I understand all of that, but either I am very stupid or else you don't understand what I am trying to find out.

The Court: Excuse me just a minute. Get Mrs. Cessna to read that answer back, and see if it isn't perfectly intelligible.

Mr. Bowles, Jr.: I heard it, sir. It is, but it doesn't respond to what I am trying to find out.

The Court: Your question was if there was a profit, what became of it?

Mr. Bowles, Jr.: Yes, sir.

The Court: He said that it was set up in the following year to the credit—

Mr. Bowles, Jr.: I so understand.

The Court: All right.

Mr. Bowles, Jr.: Well, now, may I go on from there, sir?

The Court: Please, sir, but—

Mr. Bowles, Jr.: But what?

[fol. 418] The Court: If you don't understand, get the reporter to read it back to you, and I think you will understand.

Mr. Bowles, Jr.: Well, sir, read it back, and let me see whether I do or not.

(Thereupon, the court reporter read the witness' last answer.)

Mr. Bowles, Jr.: Now, may I say to the Court, in all frankness, that I personally don't understand that, and I would like to ask some questions about it.

The Court: You certainly may do so.

By Mr. Bowles, Jr.:

Q. Now, what do you mean when you say "absorbed," absorbed by whom?

A. You asked me if we made a profit, and I would take from your question, that you would imply that if there was a profit that it went into the general fund of the Brotherhood. That isn't true. Each year, as I get the picture, and as far as our records show, there was—say \$70,000 would come in. If the office expense was \$62,000,

that \$8,000 would be carried on the next year, and then at the end of the next year, if the office expense was \$75,000 and the counsel submitted \$80,000, that \$5,000 was carried over to the next year, and absorbed in the operation, and that continued until April 1, 1959, and then all monies that had been submitted over the years, were absorbed and from that date, April 1, 1959, we have supported that department of Legal office by our general funds of the Brotherhood.

Q. Right. Now, then, this is what I understand from your answer, that your office now kept only the book figures of total receipts and total expenditures?

A. That's right.

Q. Now, your office then, and your office records, showed whether or not there was a profit or loss in each of those years?

A. And that is in those records there.

Q. I understand, and that if there was a profit which you say you think there was, in each of those years, it was carried over as a credit to the Legal Aid Department on your books?

A. I wouldn't call it technically a profit. I would say it was a surplus.

Q. Well, a surplus, whatever it was, an excess over expense of contributions?

A. That's right.

Q. Now, that showed on your books each year as a credit to the Legal Aid Department?

[fol. 420] A. That's right.

Q. Now then, I understand that after, whatever this date is, April 1, '59 we are talking about, that your books showed there were no credits—

A. That's right.

Q. —coming in, and it was a loss from then on and that the general fund took care of that?

A. With one exception, Mr. Bowles. After April 1, 1959, some of the general counsel, on the basis of the estimate for the 1958 business, might have submitted after April 1, 1959, their pro rata share for the year 1958, and that is shown.

Q. Now you have just pointed out exactly one of the things that I wanted to come to. These records on your books do show that there were contributions that were received after April 1, 1959?

A. There were a few for 1958 business. They weren't current. They weren't current expenses, they were expenses for the previous year that the regional counsel had been late in submitting, I imagine, to the chief clerk of the Legal Department.

Q. Now, whatever may have been the cause, and you said the cause is because they were still owing for previous years?

[fol. 421] A. That's right.

Q. As late as May 17, or the 7th, 1960, your books would show that they were paying up back payments?

A. No, sir. In 1960, as I explained to the Judge earlier, the payments there are shown and are for the organizers that we paid from Grand Lodge for work done—not organizers, the investigators—we paid them through the Grand Lodge for work done for the regional counsel.

Q. In other words, instead of regional counsel paying them and charging them back, then you paid them direct?

A. That's right.

Q. Which was a question of the same thing, only who issued the check?

A. Well, I would say yes.

Q. I didn't catch that, sir.

A. Well, I guess it would be the same thing, yes.

Q. Yes.

A. In other words, there was an expense involved, and they paid it to us and we paid it. We paid the investigators direct from Grand Lodge to maintain their railroad retirement continuity of service.

Q. Now, I want to ask you what it was that you brought on October 9 in response to the subpoena we were talking about the other day, and now I am at the place I would like [fol. 422] to know what it was.

A. The synopsis of the financial records of the Legal Aid Department from '54 through 1960, which, at the time, was what I thought you wanted.

Q. Now, how many copies of this do you have? Could we have one? I want to introduce this.

A. Yes, you may have another one.

Q. Thank you, very much. I would like to ask you to file as Exhibit—whatever the number is—

Mr. Bowles, III: L.

By Mr. Bowles, Jr.:

Q. —L, the typewritten things that you say you brought with you on October 9, consisting of four pages, I believe.

A. I don't know as to their legal implications, but if it takes—well, I am under oath to swear that as far as our bookkeeping department is concerned, these are correct.

Q. Well, we understand that, sir.

A. I mean I want to make it very plain to the Court that this is what our books show.

Q. That's right.

A. Right.

The Court: The plaintiff's Chase Exhibit L is identified and filed.

[fol. 423] (Plaintiff's Chase Exhibit No. L, a synopsis, was marked and received in evidence.)

By Mr. Bowles, Jr.:

Q. Now, Mr. Chase, are those pages then all that you brought with you on October 9?

A. Yes, sir.

Q. Now, these are—

A. Except a couple of copies of that Ernst and Ernst audit, and we filled in the balance from 1954 when we went back to Cleveland yesterday. I brought some of those copies with me.

Q. We have already put those in evidence?

A. That's right.

Q. The originals of them?

A. That's right.

Q. Mr. Chase, where did this information come from—your books?

A. Yes, sir. It came from our ledgers.

Q. I see, and are these, in effect, transcripts of the photocopies of the ledgers that we have put in?

A. Yes, sir.

Q. Now, tell me something, sir; I gather from your statement a very few minutes ago, that—

[fol. 424] A. The only difference, may I clarify this last question?

Q. Sure, please do.

A. This is the exact duplicate of these Ernst and Ernst reports, except in Ernst and Ernst's, we don't show any deficit, because we show a total expense of the department, and after those two years, there is no red figure, because the general fund absorbed them; but in our own book-keeping department, which this portrays, we go down into detail, and showed the income and the output, and then the red figure means that was money that didn't come in to support the department, so we had to support it out of the general fund.

Q. Now, would you, of your own knowledge—I believe you have just said a moment ago, that these regional investigators are all—whatever you call them, the investigators—are all members of the union of the Brotherhood?

A. Yes, sir, I think they were, yes, sir.

Q. And they carried and get, what is it? Railroad retirement benefit?

A. Yes, sir.

Q. And unemployment benefit, as such. Now, they pay dues?

[fol. 425] A. Yes, sir.

Q. Now, legal counsel and regional counsel are also all members of the union of the Brotherhood?

A. I think they all are, except one. I think, if you notice in the last issue, there is one of them that the application for membership is pending. Other than that, I believe they are all members.

Q. I think you are correct, sir, except in the last edition, he has been passed on, and he now is.

A. I think he is.

Q. We may be in error about that, but it is intended that he will become one, if he is not now?

A. Yes.

Q. Is that right?

A. I think that is correct, yes, sir.

The Court: May I catch up with you?

Mr. Bowles, Jr.: Could I ask one more question?

The Court: May I catch up with you by asking her to read to me the last two or three questions?

Mr. Bowles, Jr.: I have one more question.

The Court: You have all the time you want, and I want to keep up with you, and I don't know if I followed the last two questions and answers.

[fol. 426] (The court reporter thereupon read Mr. Bowles, Jr.'s last two questions, and the witness's last two answers.)

The Court: Now, go ahead, Mr. Bowles.

By Mr. Bowles, Jr.:

Q. My next question is, sir, that as members of the Brotherhood, they also pay dues?

A. That is correct.

Q. Is there any record in the Brotherhood as to how much dues each member pays and where those dues are allocated to?

A. Well, those dues are allocated partly to local lodge, and the balance to Grand Lodge.

Q. And is there any bookkeeping on the allocation of the amount of dues, or doesn't that also just come as a lump?

A. That comes as a lump from the treasurers of the local lodge. They are not charged any more in the way of dues than any other member. In other words, they pay the same. If, for instance, Mr. Stallard would be a member—I don't know whether he is or not—if he was, and the dues in this local lodge were \$5.40, that is all he would pay, and he would come in just as any other ordinary member.

[fol. 427] Q. And then that is divided as to the dues going—

A. The difference.

Q. The split between the local lodge and the certain amount forwarded by the local lodge to the Grand Lodge?

A. That is correct. In there are the local lodge dues and then there is a legislative assessment and then Grand Lodge dues, protective fund, and if they carry insurance, that is separate. And if they carry insurance, then there is a tuberculosis assessment. You see, they are all broken down into differences. I can show you a slip here.

Q. Well, you do that when you get up there on a percentage basis, I take it, in your office, don't you?

A. That's right. It is allocated to different funds.

Q. Now, are there any situations in which members pay any dues directly to the Grand Lodge?

A. No, sir.

Q. Are there any assessments that are made on members directly?

A. No, sir. They are all made locally through the local lodge; and I think I know what you are driving at. In no instance does anybody pay more than what the local lodge dues are, and the Grand Lodge dues.

[fol. 428] Q. There is no equality of assessment throughout the membership?

A. No, sir, there can't be, and there never has been.

Q. Well, I understand now then, that those dues that come from the local lodges that go into the general fund and are allocated out of the general fund to these various and sundry purposes?

A. That is correct.

Q. And now, under your present system, a portion of those dues are allocated to the maintenance of a Legal Aid Department, or Legal Department?

A. They are not allocated there, no, sir. They go into the general fund, and that is a general expense such as attorney fees or organizers or anything over and above the protective fund, and legislative fund comes out of the general fund.

Q. Do you have any system by which any percentage, any fixed percentage of dues that are paid by a local lodge go to any specific purpose?

A. No, no fixed percentage. They are on a strict assessment basis.

Q. Again, I think we probably are not understanding one another.

[fol. 429] A. Well, maybe if you look at this, you would understand it. This is my own receipt. This is my subordinate lodge dues of a dollar. This is a grievance assessment which goes to the general grievance committee fund. That is \$2.50.

Q. Of the local lodge?

A. Of the local lodge. This is the legislative assessment, \$2.50. That is the local lodge. This is local grievance assessment of \$.75 up here. Here are the Grand dues which is \$.75, and if the man held seniority, he would pay the protective and strike fund of \$2.75. Those people wouldn't pay that, all they would pay is the Grand Lodge dues of \$.75 a month.

Q. Well, now that clarifies part of what I wanted to ask you. The portion that goes to the Grand Lodge is the same thing for every member from every local lodge?

A. Yes.

Q. We understand one another?

A. Yes.

Q. Now, I don't know what the amount is. Your card shows \$.75. I believe you have just pointed that out.

A. That's right.

Q. That \$.75 goes to the Grand Lodge. Now, on your bookkeeping, is that divided by percentagewise, like the tax dollar to this department of government, that department [fol. 430] of government, to your internal organization at the Grand Lodge?

A. That particular \$.75, as I said before, that goes into the general fund. We have a protective fund I showed you of \$2.75 assessment. We have an insurance fund. We have a tuberculosis fund. We have a strike fund. Each one of those are separate entities, and the general fund takes care of anything that the other funds aren't specifically set up for. The general fund or the protective fund, either one of them, could take care of any unusual costs.

Q. Well, see if I am understanding you correctly now. You do have a special assessment for tuberculosis or these specific things, and the amount of that assessment is equal throughout?

A. That's right.

Q. Against every member that participates in that particular thing?

A. That is correct.

Q. And that amount, that specific amount, is collected by the local lodge and transmitted to the Grand Lodge for that specific purpose?

A. That's right.

Q. Now then, this \$.75, as you indicated on your own card, whatever that is you had, sir, that is \$.75 which goes [fol. 431] to the general fund?

A. That's right.

Q. Now, that is equal throughout on all members?

A. That is correct; every member pays the same amount.

Q. And that is the amount that each member pays through the local lodge for all of the unspecified assessments; is that correct?

A. Well, it is paid through the local lodge for Grand Lodge use. The local lodge transmits it to the Grand Lodge. We use that for the payment of our officers and salaries and any extraordinary expense that might come up that we don't have a specific fund set up for.

Q. Well, that is what I asked. None of that goes to any of these specific assessments purposes?

A. That is correct.

Q. Now then, I will come back to my original question, in regard to this \$.75. Do you have any specific percentage method of allocating that to any of the other?

A. No.

Q. Unspecified purposes?

A. No, sir.

Q. Out of that \$.75, however, is now coming the deficit maintained by the Department of Legal Counsel?
[fol. 432] A. Well, out of that \$.75 we are now paying for that office in Cleveland.

Q. Well, whatever this deficit is that you showed here, Exhibit Chase No. L, for the years 1960 and '61, that deficit of the Department of Legal Counsel is being satisfied out of that \$.75 is what I am talking about?

A. That is correct.

Q. Through this general fund?

A. That is right.

Mr. Bowles, Jr.: Now I understand, if Your Honor please, that the record is clear as far as we can make it clear at this time, that the exhibits are coming from Cleveland and with the tender of those as exhibits, I think the complainant rests.

A. (Continuing) I don't know what they are, Your Honor.

Mr. Bowles, Jr.: And the transcript, Your Honor, that is to come down also from Cleveland.

A. (Continuing) They are all specified in the transcript, Your Honor, and whatever is in there, if we have them available.

Mr. Stallard: Your Honor, I understand that is true, if they are available. The head bookkeeper or auditor, said he would look on the microfilm and see if he could locate [fol. 433] some.

The Court: That transcript will show that, won't it?

Mr. Stallard: Yes, sir.

Mr. Bowles, III: Yes, Your Honor.

Cross examination.

By Mr. Stallard:

Q. Mr. Chase, is the Brotherhood of Railroad Trainmen a fraternal organization?

A. Yes, sir.

Q. Aren't there certain benefits that a member gets out of it when he joins?

Mr. Bowles, Jr.: I didn't hear that last word. I must be getting hard of hearing.

A. We say yes.

The Court: One minute.

Mr. Bowles, Jr.: What was the last word you used?

The Court: When he joins, certain benefits that he gets when he joins. Now, will you read the question back, please?

(The court reporter read back Mr. Stallard's last question.)

[fol. 434] A. Yes.

By Mr. Stallard:

Q. You mentioned some insurance feature.

A. Well, we have all line insurance on our individual reserve basis, such as the all-line companies do. We have accident and health insurance, anybody carrying insurance for \$.25 a month has full TR protection, and we have rehabilitated in thirty or forty years, I think, some four or five thousand people, through our tuberculosis sanitarium, and we have a grievance department and a legislative department.

Q. Did you get a record at the home office on yesterday on Harry S. Dragmire?

A. Yes, sir.

Q. Did President Kennedy testify that he fired him? Will you look in the file, and see if you can ascertain the date?

A. August 5, 1960, I believe.

Q. Now, I will direct your attention to—

Mr. Bowles, Jr.: Could I see what it is?

A. Sure.

By Mr. Stallard:

Q. What is it, Mr. Chase?

A. It is a wire telegram telling Dragmire to comply with the decision of some court, and he will refrain from that [fol. 435] date forward from representing the Brotherhood in any case.

Q. I will direct your attention to some evidence here with reference to B. G. Byington, general chairman of members of the State of Georgia. Would you explain what the general chairman of a membership in Georgia means?

A. Yes, sir, he is just a representative on that particular railroad.

The Court: A little louder, please?

A. (Continuing) He is a representative, Judge, on that particular railroad, representing our membership on that property, and they have their own attorney. He is in no way connected with Grand Lodge, other than we have gen-

eral supervision over those railroads, to see that they comply with the provisions of our constitution.

Mr. Stallard: That is all.

The Witness: He just wanted to see the one letter, I believe.

(The witness is referring to a file which Mr. Bowles, Jr., has.)

Mr. Stallard: I don't think he should examine our whole file, Your Honor. I asked him to get the file from our president's office, and I don't know what is in the file. He just wanted the date. I don't know that he can search all [fol. 436] the files. It might pertain to something that doesn't have anything to do with this case.

Redirect examination.

By Mr. Bowles, Jr.:

Q. I want to ask you, sir, whether this was part of the records that you got out of Mr. Maher's office?

A. Yes.

Q. Yesterday?

A. That was furnished me.

Q. Why wasn't that in this folder, instead of in your folder? This is a financial record, isn't it?

A. No, that isn't any financial record.

Q. It is the end of the man's record—and paying him off?

A. That isn't a financial record.

Q. Well, sir, the—

Mr. Stallard: May I see that? I have never seen that.

Mr. Bowles, Jr.: Well, may I get through first?

The Witness: I think there are letters from counsel in there, Your Honor, that aren't any part of that document. [fol. 437] Mr. Bowles, Jr.: That's right, they are your letters, Mr. Stallard.

By Mr. Bowles, Jr.:

Q: Is this the telegram that you are talking about, dated:

"August 5, 1960

"Harry S. Dragmire
199 Hilltop Crescent
Walnut Creek, Cal.

"In accordance with the decision of Judge O. D. Meyer of the Superior Court of Los Angeles rendered Thursday August 4, 1960, you are immediately enjoined from participating in any manner as a representative of the Brotherhood of Railroad Trainmen in California. In any instance in which a member of the Brotherhood has been injured or killed while on duty as an employee of any railroad operating in that state please return to me at once the commission as a Brotherhood investigator which I issued to you for the current year.

W. B. Kennedy, president."

Is that the telegram you have in mind?

A. Yes, sir.

Q. And attached to it is Mr. Dragmire's card for the year 1960, and is this the letter that you referred to, dated:

[fol. 438]

"August 19, 1960

"Room 1830,
1212 Broadway,
Oakland 12, California

"Mr. W. P. Kennedy, President
Brotherhood of Railroad Trainmen
1528 Standard Building
Cleveland 13, Ohio

"Dear Brother Kennedy:

"In reply to your wire of August 5, 1960 it is with the deepest regret that I enclose herewith my commission as an investigator for the Brotherhood of Railroad Trainmen for the year 1960. The privilege that you have extended me over the years as a Brotherhood in-

vestigator came at a most opportune time for me, because in 1949 I received a back injury while working for the Union Pacific Railroad, which resulted in a disc operation, and as a result of this injury and operation, I was not physically able to return to my job with the Union Pacific. My commission as an investigator provided me with a means of earning my living up to the present time, for which I have been very [fol. 439] grateful.

"Because of my limited education, it is difficult for me to obtain work other than with the railroad and my physical disabilities prevent me from ever returning to that type of work. For the present I will remain with Brother Hildebrand's office in Oakland, California, as an investigator for the law firm for the sole purpose of investigating cases that Brother Hildebrand may have come into his office in the future. This will probably be on a part-time basis.

"If at any time I can be of any service to you personally or the Brotherhood of Railroad Trainmen, I want you to know that I will be only too happy to accept any assignment that you might have for me.

"Kindest personal regards,

"Fraternally yours,

Harry S. Dragmire.

"Copy to C. R. Maher, Chief Clerk,
Department of Legal Counsel
Brotherhood of Railroad Trainmen,
Room 46, Standard Building,
Cleveland 13, Ohio."

Is that the letter accepting the thing that you had reference to?

[fol. 440] A. That's right.

Q. And is this the letter, August 24, or 25th, that is headed 1960 appears to be a copy,

"Mr. Harry S. Dragmire
Room 1830, 1212 Broadway
Oakland 12, California

"Dear Brother Dragmire:

"Thanks for your letter of August 17, 1960 and your investigator's commission card which you returned to the office in accordance with my wire of August 5, 1960. Your cooperation under these unpleasant circumstances is appreciated.

"With kind regards, I am,

"Faternally yours,

W. P. Kennedy, President

"Copy to

Mr. C. R. Maher, Chief Clerk,
Department of Legal Counsel."

Those are the letters that you had reference to?

A. That is correct.

Mr. Bowles, Jr.: I think that is all, sir.

Mr. Stallard: No more questions.

The Court: I want you to give me a few minutes, please.

[fol. 441] Mr. Bowles, Jr.: I have no further questions, sir.

The Court: I want you to give me a few minutes.

Mr. Bowles, Jr.: I beg your pardon, sir. I didn't know whether you understood that I was through.

The Court: Yes, sir, I did.

Mr. Chase, I am taking a preliminary view of some of this record on yesterday. I found myself quite mystified by Plaintiff's Exhibits 36 and 37. They are letters. These two letters are from Mr. Kennedy, your president to Mr. Bernard M. Savage. They are both dated October 12, 1949. I want you to read these, if you will. The first one cancels the appointment of Mr. Savage as regional counsel. The letter is the same date which is Exhibit 37,

"Because of your outstanding success and so forth, I have decided to reappoint you effective the 15th of October."

I didn't see anything in President Kennedy's deposition relative to those two letters.

Mr. Bowles, Jr.: Yes, sir.

The Court: There is something in there?

Mr. Bowles, Jr.: Yes, he explains that fully. He says it is a situation very much like when a new president comes [fol. 442] into the United States, that all of the ambassadors all over the country resign, as a matter of technical things, and then he reappoints them. It is a courtesy extended to the incoming president.

The Court: And that is in the deposition now? May I strike that from the record?

Mr. Bowles, Jr.: I don't think this gentleman would know—

The Court: I don't think so, but I was quite mystified. Strike what I have said from the record, please. I don't know how I missed that in there.

Mr. Bowles, Jr.: Well, I think it is just a casual remark.

The Court: It is all right, if it is there.

Mr. Bowles, Jr.: It is in there.

The Witness: I can say this, from my own knowledge, Your Honor—

The Court: Off the record.

Mr. Bowles, Jr.: I wish it to go on.

The Court: My question will be deleted from the record unless counsel insists otherwise, because I did not know that it had been taken up.

Mr. Bowles, Jr.: Well, now, Your Honor, I am looking [fol. 443] at this. I have an index to this testimony down at my office.

The Court: Well, the explanation satisfies me.

Mr. Bowles, Jr.: Well, I think that it is in there. There is so much that has gone on in there.

The Court: That was the time Mr. Kennedy became president?

The Witness: Yes, sir, he became president.

The Court: Your explanation is satisfactory to me. I am sorry I asked the question.

Mr. Bowles, Jr.: It is very pertinent, if Your Honor please. We expect to bring that to your attention.

The Court: I have withdrawn my question.

Mr. Bowles, Jr.: Well, Your Honor, you don't understand my position, apparently. If I am in error in what I said to you, that it is in President Kennedy's deposition, I want that fact in the record.

The Court: If it was at the time that Mr. Kennedy took office as the president, I am no longer mystified and withdraw my question.

Mr. Bowles, Jr.: Well, is it conceded that that is a fact?

Mr. Stallard: Yes, that is what took place. Everybody resigned and they started all over.

[fol. 444]

PLAINTIFF RESTS

The Court: Now, that completes the plaintiff's case?

Mr. Bowles, Jr.: That is correct.

The Court: And you are continuing with your evidence and you have completed your examination?

Mr. Stallard: I have completed my examination.

The Court: You have completed your redirect?

Mr. Bowles, Jr.: He was about to tell me—

Mr. Stallard: I wanted to ask him one question.

Mr. Bowles, Jr.: Of this witness, you mean?

The Court: Yes.

Mr. Bowles, Jr.: Oh, yes, sir, I am through.

Recross examination.

By Mr. Stallard:

Q. You have here for the year 1960 \$23,410.31 paid into general fund; does that represent contributions in '60 or '59?

A. I think from our auditor's explanation, some of that possibly comes from the early part of '59. Some of it might have been paid in for investigators' salaries only.

Mr. Stallard: Well, now, going back to the—

Mr. Bowles, Jr.: Well, may I note an objection? You say "you think" from something; isn't that all in what we [fol. 445] have shown here, Mr. Stallard, if it isn't, I am mistaken.

Mr. Stallard: Well, if it is, it is not very important then.

Mr. Bowles, Jr.: Well, if he doesn't know about it, I would object to his testifying about it.

A. That is the information furnished me, Mr. Bowles, as I told you; I didn't know anything about it.

Mr. Bowles, Jr.: That is all hearsay, sir. That is the reason I am objecting, and I understand that these records that have been put in show these facts. Now, if I am not correct about that—isn't that a fact, Mr. Stallard?

Mr. Bowles, III: The transcript contains an explanation of it.

Mr. Stallard: I don't know what you have in mind, Mr. Bowles. I know what I have in mind, but I can't transport what you are thinking into my mind, and list it. I don't think it is very significant, to be very frank with you.

Mr. Bowles, Jr.: I move to strike it out, if it isn't very significant.

The Court: Do you withdraw the question?

Mr. Stallard: No, sir, I will leave the question on the [fol. 446] record, and you can rule on it.

Mr. Bowles, Jr.: Well, then, Your Honor, I must pursue it.

The Court: Will you read the question, please?

(The court reporter read Mr. Stallard's last question, as follows:

"Q. You have here for the year 1960, \$23,410.31 paid into general fund; does that represent contributions in '60 or '59?")

The Court: You object to the question?

Mr. Bowles, Jr.: Your Honor, my son tells me that all of that explanation of that item from the original record is contained in this so-called transcript that is coming to the Court, and the person that made the entry tells what it is about. Now, this gentleman doesn't know what went on.

The Court: If you don't know, Mr. Chase, of your own knowledge, what that item represents, will you say so?

A. Well, from my own knowledge, I can't say that I do. I know that is what the bookkeepers and Mr. Maher told me it represents, that I can tell you.

Mr. Bowles, Jr.: That is in the transcript, I understand.
 [fol. 447] The Court: Well, whether it is in the transcript or not, by the witness' own statement, it is hearsay and your objection is sustained.

DEFENDANT RESTS

Mr. Stallard: The defendant rests, Your Honor.

Mr. Bowles, Jr.: With the exceptions that have been noted in the record as to evidence that is coming, it is my understanding that both sides now rest in the presentation of testimony.

The Court: Unless you have some rebuttal evidence, the testimony will be closed.

Mr. Bowles, Jr.: That's right, sir. We have indicated what other further evidence we actually have.

The Court: Several times.

Mr. Bowles, Jr.: Yes, sir. Well, you said unless we do, and I don't know exactly what you meant by that, sir.

The Court: I was going to try to put it in the record, Mr. Bowles. You see, we have to take turns talking.

Mr. Bowles, Jr.: What? I can't hear you, sir.

The Court: We have to take turns talking. I was going to put something in the record.

Mr. Bowles, Jr.: Oh.

[fol. 448] The Court: The Court announces that subject to the introduction of documents which have already been referred to, the testimony in the case is now closed. Shall we excuse Mr. Chase?

Mr. Bowles, Jr.: We certainly can, sir.

The Witness: Thank you, sir.

(Witness excused.)

MOTIONS OFFERED BY MR. STALLARD

Mr. Stallard: Your Honor please, I have some motions to make, eight motions, to be exact. They are written motions that I have furnished counsel for the Bar copies of them. The first motion concerns exhibits filed with the depositions of W. P. Kennedy.

The Court: Shall we take them one at a time?

Mr. Stallard: Yes, sir.

The Court: Hand me the motions, please, sir. You have seen copies of this, Mr. Bowles?

Mr. Bowles, Jr.: I think so, sir. I have received a batch of motions here today. Whether they are the specific part you are looking at, I don't know.

(Mr. Warriner, the Clerk, steps into the courtroom.)

[fol. 449] Mr. Bowles, Jr.: May the record show that the originals are returned to Mr. Chase?

The Court: It should show that, I believe. Does the record show that would be done?

Mr. Bowles, Jr.: Yes, sir. I would like to show that it has been done.

(Discussion off the record.)

The Court: I am striking everything that is on the record after I announced that the evidence was closed.

Mr. Bowles, Jr.: What is it you are striking out, sir?

The Court: Read the motion made by Mr. Stallard, please.

(The court reporter read back Mr. Stallard's motion.)

The Court: Nothing has happened then on the record except the mention of the several motions, and we are coming to that in a minute.

Mr. Bowles, Jr.: I am sorry, sir, but I am utterly confused. I just think it would be an awfully good idea if we [fol. 450] stopped this on-and-off-the-record altogether, because it gets me so mixed up as to what is there and what I want to preserve on this record, that I just don't know where I am.

The Court: I am striking out only, Mr. Bowles, what was said by Mr. Stallard after the Court announced that the evidence was closed, and he began to take up these motions. I just want him to begin to take up these motions all over again, because I want to put the return of these audits to Mr. Chase in accordance with your suggestion and then go on with the motions.

Mr. Bowles, Jr.: I understand, sir, but I didn't until that explanation was made, and I am just sorry I am so dumb.

- The Court: I give you my assurance that everything counsel wants on the record is going on the record. I go off the record simply because sometimes we can accomplish a good bit informally, and anything that happens informally you can put on the record.

Mr. Bowles, Jr.: May I say to the Court that I have also lost sleep for the past six weeks, and if you will please stay on the record, so as to do that personal favor for me, because I am getting to the point that I cannot understand. I cannot grasp what is going on, and it confuses me, and [fol. 451] as a personal favor, I would appreciate your not doing it.

The Court: Does that include conferences with counsel in chambers?

Mr. Bowles, Jr.: What is that, sir?

The Court: Does that include conferences with counsel in chambers?

Mr. Bowles, Jr.: No, sir, it does not, unless I request it to be done.

The Court: I have said you can have anything on the record that you request. Your request now is that everything that occurs in the courtroom from now on goes into the record, including the arguments of counsel?

Mr. Bowles, Jr.: If Your Honor please, may I make a simple statement? You have made the statement that you are going to strike off everything that was said after a certain point out of this record. My mind is incapable of knowing what everything since a certain time is, so I don't know whether I agree with you or whether I don't agree with you, and I just am unable to say yes or no, whether it goes in or whether it doesn't, because I don't know what you are talking about.

The Court: I want to put this on the record pursuant to your suggestion. Before there is any recess, and I will put it on right now, without striking anything. This is your [fol. 452] suggestion. I am going to adopt your suggestion.

Mr. Bowles, Jr.: What is my suggestion, sir?

The Court: That I let the record show that these photostats of the pages from the auditor's reports have been made, identified, and filed, and the originals of those are returned to Mr. Chase.

Mr. Bowles, Jr.: That is all I tried to get into the record, sir.

The Court: That is what I am trying to get in now.

Mr. Bowles, Jr.: So am I, sir, but I don't see how that happens to include striking out something that has gone on before.

The Court: It would be just a little more orderly before taking up the motions.

Mr. Bowles, Jr.: I don't agree that it is orderly.

The Court: It is just a difference of opinion, Mr. Bowles, that everything has happened except this colloquy I expect is to be stricken from the record. Is that all right?

Mr. Bowles, Jr.: I don't know, sir. Will you give me a recess, please?

The Court: Yes, I will. Mr. Bowles, Jr., you stay while [fol. 453] I put these in the record?

(Mr. Bowles, Jr. leaves.)

The Court: The photostatic copies taken from the auditor's books are now identified and filed as Plaintiff's Chase Exhibit K. Mr. Bowles, you may go if you want. All I am going to do is the formal matter of putting this in and saying—

Mr. Bowles, III: I know. If you prefer, I will remain, sir.

The Court: I know you are anxious, sir, and I will excuse you. It is just a formality.

Mr. Bowles, III: I realize that.

The Court: I am going to return these, and that is all I am going to do in your absence.

Mr. Bowles, III: I appreciate the courtesy of the Court, sir.

The Court: The photostatic copies taken from the auditor's book are now identified and filed as Plaintiff's Chase Exhibit K-1950 to K-1960, inclusive, eleven in all, and in pursuance to the understanding, the original audits are now returned to Mr. Chase, who is excused from further attendance on court.

Mr. Chase: Thank you.

(Plaintiff's Chase Exhibit Nos. K-1950 through and including K-1960, being photostatic copies of the original [fol. 454] schedules, were marked and received in evidence.)

The Court: Now, that will be all clear on the record.
The Court will now recess.

(Whereupon, the trial was concluded at 11:40 a. m.,
October 13, 1961.)

[fol. 455] Certificate of Counsel as to transcript (omitted
in printing).

[fol. 456] Judge's and Clerk's Certificates to foregoing
transcript (omitted in printing).

[fol. 457] [File endorsement omitted]

IN THE CHANCERY COURT OF THE CITY OF RICHMOND, VIRGINIA

COMMONWEALTH OF VIRGINIA, ex rel., Virginia State Bar,
Complainant,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN et al., Defendants.

Report of Conference—October 12, 1961

Report of conference with the within-named persons at
the offices of the Brotherhood of Railroad Trainmen, Rooms
1428 and 1246 Standard Building, Cleveland, Ohio, on
Thursday, October 12, 1961, commencing at 4:15 p.m., con-
cerning matters involved in the above-entitled action.

PRESENT:

Persons at various times during the conference: Mr.
Aubrey R. Bowles, III, Mr. Beecher E. Stallard, Mr. W. E.
B. Chase, Mr. J. W. Orpin, Mr. Joseph F. Powers, Mr.
Charles R. Maher, Mrs. Virginia Clark, Mr. William E.
Ferris, Notary Public.

[fol. 458] Offices of: Brotherhood of Railroad Trainmen, 1428 Standard Building, Cleveland, Ohio, Thursday, October 12, 1961, at 4:15 p.m.

(During the conference the following persons were duly sworn by the Notary: W. E. B. Chase, J. W. Orpin, Joseph F. Powers, Charles R. Maher, and Mrs. Virginia Clark.)

STIPULATION BETWEEN COUNSEL

Mr. Bowles: It is stipulated between counsel that all persons having to do with the producing of records on October 12, 1961, in the Standard Building, Cleveland, Ohio, being the home office of the Brotherhood of Railroad Trainmen, would be under oath and that this transcript contains the statements of the respective parties and signatures are waived.

COLLOQUY BETWEEN COURT AND COUNSEL RE ACCESSIBILITY OF EXHIBITS

Mr. Stallard: Mr. Chase, make your statement you made downstairs.

Mr. Chase: Mr. Orpin, who is my General Auditor, Mr. Bowles, representing the State Bar Association of Virginia, wants the available records we have in connection with the receipts from the Legal Aid Department and whatever disbursements we have had since whenever they are available. He wants to see the originals.

[fol. 459] Mr. Orpin: All right.

Mr. Bowles: And I'd like to state this for the record, that the Chancery Court of the City of Richmond, by its order of February 9, 1960, ordered the Defendant Brotherhood of Railroad Trainmen to produce all records relating to the operation of the Legal Aid Department, now styled the Department of Legal Counsel, and that on the 21st day of July, William E. B. Chase, who is the General Secretary and Treasurer of the Brotherhood of Railroad Trainmen, was served in Richmond, Virginia, with a subpoena duces tecum requiring that he bring all financial records of the Defendant Brotherhood of Railroad Trainmen relating to

the Legal Aid Department and the Department of Legal Counsel and all orders thereof to be produced before the Chancery Court of the City of Richmond on the 9th day of October, 1961, at 10:00 o'clock.

Mr. Stallard: May I ask, Mr. Bowles, that order of the Court on the Brotherhood of Railroad Trainmen, didn't it have a limit of five years at that time?

Mr. Bowles: I do not believe it had any limit.

[fol. 460] Mr. Stallard: I remember one order required us to produce the donations from the Legal Aid Department of—or contributions of Bernard Savage of Baltimore, and we produced for five years the contributions, which amounted to the same as Mr. Nelson gave in his deposition from Nebraska. And I thought the reason the department didn't go back any more than five years, there was a five-year limit, but, under the subpoena, I don't think there is any limit on the subpoena.

Mr. Bowles: That is correct, there is no limit on the subpoena.

Mr. Stallard: Although the Judge, I believe, said that he thought he would be reasonable. He wouldn't want any two or three carloads of papers.

Mr. Bowles: Now, also, on the 11th day of October, the Judge of the Chancery Court of the City of Richmond ordered Mr. William E. B. Chase, General Secretary and Treasurer of the Brotherhood, to produce said records before his Court on Friday, October the 13th, at 10:00 o'clock.

Just so there will be no misunderstanding, I would like to state for the record that what we want is all financial records relating to the operation of the Legal Aid Department or the Department of Legal Counsel showing all funds [fol. 461] coming in and going out, regardless of the nature or the source, including the salaries of the personnel, regardless of the type of personnel, from as far back as they have them to the 13th of October, 1961.

Mr. Chase: What are your available records, John?

Mr. Orpin: Well, could I—

Mr. Bowles: I might add this first. More particularly, the records believed to be in existence in the office of C. R. Maher, M-a-h-e-r.

Mr. Stallard: Well, counsel for the defendant understands that this office here has nothing to do with Mr. Maher's office.

Is that true?

Mr. Orpin: That is correct.

Mr. Stallard: We are going next over to Mr. Maher's office to try to get some photostats.

Mr. Chase: In other words, I made certain commitments to the Court in Richmond, Virginia, as to my responsibility in connection with these records and as to what records we had available, and I want as a matter of record Mr. Bowles to look at our records and tell us what he wants from this office. And then when we finish, we will go down to the office of Mr. Maher and Mr. Bowles can talk to him. [fol. 462] Mr. Bowles: I want it to be perfectly clear that we are not talking about photostats but the originals.

Mr. Stallard: I understand that we can take the originals? We can take them, could we? Are they looseleaf that we could?

Mr. Orpin: They are looseleaf, yes; up to a point, but isn't that rather dangerous? I mean how long would such records be—you spoke about October 13th?

Mr. Bowles: They would be taken to Richmond in the custody of your General Secretary and Treasurer and delivered to the Clerk of the Chancery Court of the City of Richmond.

Mr. Orpin: And you mentioned October 13th?

Mr. Bowles: That's true.

Mr. Stallard: That's tomorrow.

Mr. Bowles: Tomorrow.

Mr. Orpin: I would like to add that we do have our audit reports here for ten years. That is, certified by Ernst & Ernst, Public Accountants, which shows exactly the same as our books. They have never found anything dollars and cents wise, I mean, like they will sometimes where a clerk [fol. 463] has made a mistake, but they tie definitely to our records. Now, that's one thing.

Now, when you speak about wanting to see the records, do you want to see our cashbooks, do you want to see our general ledger, or do you want to see the actual documents that go to support, for instance, the payroll?

Mr. Bowles: I would like to see as much material as you have regarding the financial operation of the Legal Aid Department and now the Department of Legal Counsel.

Mr. Orpin: Well, now, let me get Joe to see how far back these records are.

Mr. Bowles: Off the record for a moment.

(Discussion, off the record.)

Mr. Orpin: Probably the supporting data just for our disbursements and receipts are no further back than 1955, approximately, and prior to then and not further back than '47 are probably on microfilm.

Mr. Bowles: As far as bulk is concerned, what size is it? Does it occupy a filing cabinet or several filing cabinets? [fol. 464] Mr. Orpin: It could. After we took it out and assembled it in one place, it could maybe fill a couple of filing cabinets. That's a guess, now. But, you see, we have the payrolls, which happen twice a month, and then all disbursements for salaries were twice a month, and those are in voucher envelopes.

Mr. Bowles: Would you have the disbursements for salary, say, to Regional Investigators separate?

Mr. Orpin: Yes, that would be in a separate voucher.

Mr. Bowles: Well, I would like to have those for the dates previously mentioned. Have there been any other people other than Regional Investigators and the personnel of the Legal Aid Department on your payrolls as regards the operation of the Legal Aid Department or the Department of Legal Counsel?

Mr. Orpin: That's handled separate and it's a separate department, so all costs pertaining to that department would be charged to the Legal Aid or Department of Legal Counsel.

Mr. Bowles: Well, that is what I would like to see, as to the personnel in the office and the Regional Investigator or anybody else that might have been hired by Legal Aid and [fol. 465] paid by the Brotherhood.

Mr. Orpin: Well, that's a pretty big order. I mean time consuming. I kept a man around here tonight just for this purpose, so supposing we would work backwards from the present day.

Mr. Bowles: Well, as I understand, this is a problem of compilation, as far as you are concerned, of getting it together?

Mr. Orpin: Getting it together, yes.

Mr. Bowles: Perhaps we could leave you here getting that together and then go down to Mr. Maher's office and get him working on getting things together—

Mr. Orpin: All right.

Mr. Bowles: —from the standpoint of saving time.

Mr. Orpin: And you say that you want to take all the original records along insofar as our payrolls are concerned?

Mr. Bowles: Mr. Chase wants to take them along.

Mr. Orpin: Well, send them down, shall I say?

Mr. Chase: He wants them, but I am instructed to take them.

[fol. 466] Mr. Orpin: And this has to be done by tomorrow?

Mr. Chase: What sort of a problem is it, John? Where is the original record?

Mr. Orpin: Well, they are scattered through our files here and then in our subbasement.

Joe, when did we move the vouchers down? How many years' vouchers have you got up here?

Mr. Powers: We have actually only got the current year now, John.

Mr. Stallard: State your name so it will be on the record. What is your name?

Mr. Powers: Joseph F. Powers.

Mr. Bowles: And what is your position, sir?

Mr. Powers: Chief bookkeeper.

Mr. Bowles: For the Brotherhood of Railroad Trainmen?

Mr. Powers: That is right.

Mr. Stallard: Now, you ask him again. I'd like to know. I didn't hear it.

Mr. Orpin: The vouchers, you say you have up here the current vouchers, only for this year; the balance of them are downstairs?

Mr. Powers: That is right.

[fol. 467] Mr. Orpin: In our storage space in the subbasement?

Mr. Powers: Down in the storage space.

Mr. Orpin: And we can't safely state how far back they go before we put them on microfilm?

Mr. Powers: No, I couldn't really say, John, without looking at them.

Mr. Orpin: By examination down there, why, we could find out?

Mr. Powers: Oh, yes.

Mr. Chase: Do you have any book entries, John, in your ledgers that we could take which would include the pay-rolls?

Mr. Orpin: Well, it would include them in total.

Mr. Chase: That's right.

Mr. Bowles: But it would not show the individual person to whom the payment was made?

Mr. Orpin: No.

Mr. Bowles: What I want are the records that will show the total amount of payments to the individual and each separate payment to the individual.

Mr. Orpin: Of course, it wouldn't be a balancing feature, but our Tax Department cards would show each payment. It would make a much smaller package.

[fol. 468] Mr. Bowles: Well, is this a process of getting these together that would take several hours or can you estimate the amount of time?

Mr. Orpin: Yes, I would say it would take a good several hours, yes.

Mr. Bowles: So it would be impossible for us to make an 8:00 o'clock plane to take it?

Mr. Orpin: You mean 8:00 o'clock tomorrow morning?

Mr. Bowles: 8:00 o'clock tonight.

Mr. Orpin: Joe, you can answer that.

Mr. Powers: Well, just what—

Mr. Orpin: All vouchers concerning the Legal Aid or the Department of Legal Counsel for as far back as they can be furnished.

Mr. Powers: Oh, I would say we could never be able to have it out by tonight, John, I mean, because it means going through all these vouchers. I mean by that we have to

pull the stuff out, because some vouchers, as I record them, they pertain to something else also.

Mr. Orpin: That is right.

Mr. Powers: So you have to pull out each individual support, and that's a tremendous task, I mean. I don't [fol. 469] think I could have it done. I know I couldn't.

Mr. Bowles: Could it be done, say, by tomorrow morning, do you think?

Mr. Powers: That just depends how long I work, I mean.

Mr. Chase: On those tax deductions, wouldn't that give the information necessary, John?

Mr. Orpin: Yes, we could.

Mr. Chase: Do you have a ledger with the entries on them?

Mr. Orpin: Yes, there is a ledger that contains the total accumulated monthly—or daily transactions. Those are posted on one total to the general ledger each month.

Mr. Bowles: Well, you all must remember that I am a lawyer, not an accountant or a bookkeeper.

Mr. Orpin: Well, you can take this off the record.

The Notary: Is this off the record?

Mr. Bowles: Yes.

(Discussion, off the record.)

Mr. Stallard: State that over, Mr. Orpin.

Mr. Orpin: After April 30, 1960, there were no monies [fol. 470] paid out to Legal Aid Investigators. There were some in the first four months.

Mr. Bowles: Of 1960?

Mr. Orpin: '60. And nothing paid in '61.

Mr. Bowles: But the personnel of the Legal Aid Department or the Department of Legal Counsel, as it is now styled, have been paid?

Mr. Orpin: Yes, sir.

Mr. Bowles: By your office?

Mr. Orpin: Yes, sir.

Mr. Bowles: Up to whenever the last paycheck went out?

Mr. Orpin: That is right. It was—well, to be exact, it was the last day—or the 29th of September now. Tomorrow happens to be another payday.

Mr. Stallard: Let me ask, can you tell us what the contributions were from Legal Counsel to the Department? Do you have that broken down?

Mr. Orpin: No, sir.

Mr. Chase: When were the last contributions made, John?

Mr. Stallard: When was the last money you got from the Department of Legal Counsel?

[fol. 471] Mr. Orpin: You mean from the Regional Counsel?

Mr. Stallard: Yes, and how do you get it and when do you get it?

Mr. Orpin: Well—

Mr. Bowles: May I interrupt?

Mr. Stallard: That's all right.

Mr. Bowles: This man has not been put under oath.

Mr. Stallard: Put him under oath.

Mr. Bowles: You put him under oath and get him to subscribe to all the previous statements he has made.

Would that be agreeable with you?

Mr. Orpin: Surely.

Mr. Stallard: I think that would be all right.

Mr. Bowles: As well as this gentleman here, too.

Mr. Stallard: Be in the form of a deposition.

Mr. Bowles: Without notice.

Mr. Stallard: Well, by agreement of counsel. Not without notice, by agreement of counsel.

[fol. 472] (Messrs. Chase, Orpin, and Powers were duly sworn by the Notary.)

Mr. Stallard: I don't remember the last question I asked him now.

I asked you what were the contributions?

Mr. Chase: Go ahead. Excuse me.

Mr. Stallard: How do they come in? Do they come in monthly or weekly?

Mr. Orpin: Well, that we cannot answer, and Mr. Maher will answer that, because when we make deposits here, they are made, we get copies of deposits that are made; but Mr. Maher's office knows in no way whether those are re-

funds from General Counsel for investigators' salaries or what.

Mr. Bowles: All of the financial operations of the Legal Aid Department, or now the Department of Legal Counsel, are carried on through the office of the General Secretary and Treasurer or do they have a separate bank account of their own?

Mr. Orpin: No, it's carried through the office of the General Secretary and Treasurer and deposited with all other receipts.

Mr. Bowles: And I gather that your records, other than the payment to the individual Regional Investors and personnel in the Legal Aid Department and Department of [fol. 473] Legal Counsel, as far as contributions by Regional Counsel, or now Legal Counsel, your records only reflect a lump sum or a figure at an end of a certain period of time but do not reflect each individual amount of money that came in from each individual Legal Counsel—

Mr. Orpin: That is correct.

Mr. Bowles: —or Regional Counsel? And I believe you stated that Mr. Maher would have those records in his office?

Mr. Chase: Maybe I didn't understand that. You meant by that, Mr. Bowles, that as far as the general auditor is concerned, the only thing he received were lump sum payments that were deposited in distribution, but didn't receive any broken down—

Mr. Bowles: Journals.

Mr. Chase: —list or journal of who they were from?

That's what you answered?

Mr. Orpin: That is right. That's what I understood your question to be.

Mr. Bowles: But just the amount of money?

Do I also—correct me if I am mistaken—understand that your office assisted Mr. Maher in working out the percentage [fol. 474] contributions to be made by Regional Counsel or Legal Counsel?

Mr. Orpin: Well, I did that as a clerk, because I have a machine on my desk. I have no record of that at all. Just the same as I will calculate anything for anybody that comes in.

Mr. Bowles: Right.

Mr. Chase: In other words, you just made a calculation, but you don't have any record of it or didn't know what it was from?

Mr. Orpin: I have no record of it, no, sir.

Mr. Stallard: I would like to ask you, Mr. Orpin, if you could tell us the amount of money that came in through the Department of Legal Aid last year, 1960?

Mr. Orpin: Yes, we can tell you that.

Mr. Stallard: What is that?

Mr. Orpin: It's \$23,410.31.

Mr. Stallard: Do you know what that represents? Do you have any idea?

Mr. Orpin: No, sir.

Mr. Chase: What came in this year, Mr. Orpin?

Mr. Orpin: Not a thing. There hasn't been one penny [fol. 475] returned this year.

Mr. Stallard: Well, now, we'd have to ask Mr. Maher to find out what that represented, would we?

Mr. Orpin: Yes.

Mr. Stallard: I see. You just don't know?

Mr. Bowles: I am handing you a photostat of Nelson Exhibit A, filed in the proceeding in Virginia, and I ask you if you can recognize any of the handwriting on there as yours or any member of your staff? Now, I am not talking about the ball point pen writing which was written on since that was photostated.

Mr. Orpin: No, sir, I wouldn't recognize that writing. Let me look further. None of it is mine.

Mr. Bowles: And you do not recognize the person whose writing it might be?

Mr. Orpin: No, sir. In fact, I have never seen these papers before.

Mr. Chase: That's the first time I ever saw them was the day before yesterday.

Mr. Bowles: If Mr. Stallard has no objection, I would like to put that paper in with this—

[fol. 476] Mr. Stallard: Put it in here, yes.

Mr. Bowles: —as Exhibit—

Mr. Stallard: That's all right.

Mr. Bowles: Call it Orpin 1.

Mr. Stallard: Just say Exhibit 1.

Mr. Chase: How would it be an exhibit of Orpin's?

Mr. Bowles: Well, I presented it to him.

Mr. Stallard: No, you didn't.

Mr. Bowles: He did not identify it.

Mr. Stallard: I think by stipulation we can do that.

Mr. Bowles: So it can show that he did not do this.

Mr. Chase: That is right.

Mr. Bowles: And I am vouching for the record that this is a photostatic copy of Nelson Exhibit A heretofore filed in this proceeding.

Mr. Stallard: Well, that is a copy, I imagine.

Mr. Bowles: That is a copy of a photocopy.

Mr. Stallard: Yes, that's all right.

[fol. 477] Mr. Stallard: I think Maher might identify that. He might. I don't know.

Mr. Orpin: I have no idea. I recognize no handwriting on there at all.

(7-page document marked, "Orpin Exhibit A.")

Mr. Bowles: Mr. Orpin, do you feel that the records that I have asked you for that you would be able to complete the compilation of them by tomorrow morning?

Mr. Orpin: You mean by that by working all night long? And then, I don't know, it's hard to determine how long it will take us.

Mr. Bowles: Well, you understand that this proceeding in Virginia is in process and that we have continued it to get these records, and I think we were all anxious to resume tomorrow morning at 10:00 o'clock in Richmond, if possible. Now, I understand from you that it would not be possible to get these records together in time to take them back to Richmond on an 8:00 o'clock plane tonight?

Mr. Orpin: No, that would be impossible.

Mr. Bowles: But you do think—

Mr. Chase: Let me ask you this question, Mr. Bowles. In view of what you have heard from Mr. Orpin, do you [fol. 478] think that information would be necessary?

Mr. Bowles: I do, sir.

Mr. Stallard: Well, I will tell you what we could do. You could come back. We get out tonight ourselves, but we won't cover that record. That's it. We could go down to see Mr. Maher and look at his records while Mr. Orpin was getting up some records. Then Mr. Bowles and I would come back up here and Mr. Bowles would either say, "That's the type of record I want. Will you get that up as far as you can and send it down to us at the Court at Richmond?" Then we might be able to catch a plane tonight and be in court in the morning.

Mr. Bowles: That is a possibility, depending on what we find. Now, when Mr. Stallard referred to "up here," I presume this is the 14th floor—

Mr. Orpin: Yes, sir.

Mr. Bowles: —we are on of the Standard Building?

The Notary: What is the room number here?

Mr. Orpin: Well, I always term it 1428 is the big door [fol. 479] outside there. The Standard Building.

Mr. Stallard: Well, we will slip on downstairs, then.

[fol. 480] Offices of: Brotherhood of Railroad Trainmen, 1246 Standard Building, Cleveland, Ohio, Thursday, October 12, 1961, at 4:45 p.m.

(CHARLES R. MAHER was duly sworn by the Notary.)

Mr. Bowles: Would you state for the record, Mr. Maher, your full name and position?

Mr. Maher: Charles R. Maher, M-a-h-e-r, Chief Clerk to the President of the Brotherhood of Railroad Trainmen, assigned to supervising the Department of Legal Counsel and the Department of Research and Investigation.

Mr. Bowles: Now, would you state for the record, Mr. Maher, how long you have held this position?

Mr. Maher: This assignment has been since March 22, 1954.

Mr. Bowles: And before that, what position did you hold?

Mr. Maher: Before that I was a Brotherhood Investigator.

Mr. Bowles: What has been termed Regional Investigator?

Mr. Maher: Well, I was assigned a Region, yes. My title was Brotherhood Investigator.

[fol. 481] Mr. Bowles: You carried one of these investigator's commission cards issued by President Kennedy?

Mr. Maher: Yes, sir.

Mr. Bowles: And prior to that time, what position did you occupy?

Mr. Maher: Well, prior to that time, for forty-one some odd years, 41 years and some months, rather, I have held seniority as a yard brakeman and yard conductor on the Big Four Railroad at Danville, Illinois, which is a subsidiary and part of the New York Central System.

Mr. Bowles: Well, I believe you were Chief Clerk of this department for an eight months' period in '47?

Mr. Maher: Not as Chief Clerk. I was manager of the department when the title was manager, from June 1, 1947, until February 1, 1948.

Mr. Bowles: Now, you have produced copies of three ledger books or journal books or entry books, I believe you term them. Now, do these three volumes purport to be all the records that you have in your control relating to the financial transactions of the Department of Legal Counsel?

Mr. Maher: No, they are not.

[fol. 482] Mr. Bowles: What other records do you have?

Mr. Maher: I have in my control a ledger book in which has been put receipts and disbursements coming into and going out from the Brotherhood of Railroad Trainmen headquarters of items pertaining to the operation of the department I represent.

Mr. Bowles: Could you get that book, sir?

Mr. Maher: I can, yes, sir, but I want to tell you this: That book is not here in this office, because my office has been broken into twice. My desk has been broken into. And I am going to make damn sure that nobody sees that book, which is my private—or the department's private record of what has gone on, unless I have a court order that I am forced to produce it.

Mr. Stallard: Well—

Mr. Bowles: I think Mr. Stallard can explain that to you.

Mr. Stallard: Mr. Maher, the Court has ordered us to produce it. If you have got it locked up somewhere—I can

understand your apprehension—we will have to go and get it.

Mr. Maher: I will be put in jail before I go and get it, [fol. 483] unless my boss, the President of the Brotherhood, tells me to produce it.

Mr. Stallard: Well, as counsel for the Brotherhood, I have agreed that we would produce it.

Mr. Maher: Well, I will tell you this: If it's produced, it will be produced and not get out of my hands. And I will tell you another thing: I am under a doctor's care, and it will be produced here in Cleveland, it won't be produced in Virginia.

Mr. Stallard: No, you will not have to go down. I understand. I got your doctor's certificate saying we shouldn't even put you under oath. He said if you were to get apprehensive, you would get worked up. That's the wrong thing to do. Frankly, I didn't even think we were going to put you under oath. I had no idea.

Mr. Maher: Well, what I say—

Mr. Bowles: Well, let me state this for the record, Mr. Maher, that I have no intention through any questions I may ask of you in any way to jeopardize or endanger your health. However, as Mr. Stallard pointed out, the Chancery Court of the City of Richmond has ordered Mr. William E. B. Chase to bring these records back to Richmond by 10:00 o'clock tomorrow morning to be presented in court. [fol. 484] Mr. Stallard: No, counsel for the defendant won't agree with that. Mr. Chase has no control, as I understand it—

Mr. Maher: That is right, Mr. Chase—

Mr. Stallard: —over these papers.

Mr. Chase: For the sake of the record, Bob, have I ever seen these books before?

Mr. Maher: No, sir.

Mr. Chase: Do I know anything about your department?

Mr. Maher: You do not, as far as I know.

Mr. Chase: Have I ever seen the ledger of any of these things?

Mr. Maher: You have not.

Mr. Chase: Have I any control over them?

Mr. Maher: You have not.

Mr. Stallard: I'd like you to get them so we can inspect them. Maybe we could photostat some of them.

Mr. Maher: Well, that will entail a trip out to my home. That's where the ledger is, where I intended it should be, because—

[fol. 485] Mr. Stallard: Well, could you tell me what the ledger is?

Mr. Maher: Would you take this off the record?

Mr. Bowles: Well, I would like to have it on as to your description.

Mr. Maher: I want to tell you something off the record. Then if you want it on the record—

Mr. Bowles: All right.

(Discussion, off the record.)

Mr. Stallard: Go ahead.

Mr. Maher: The reason this ledger is in my possession at my home is due to the fact that in the suit filed against the Brotherhood and others in the State of California by the Santa Fe and the Southern Pacific Railroads, the attorney representing the Brotherhood stated that he had been told by the counsel representing the railroads that he knew exactly where Mr. Maher kept his private records, that it was in the right-hand drawer of his desk, "and we know exactly what is on it and everything about it."

Mr. Bowles: What is the purpose of your making this statement, to explain why the book is now at your home?

Mr. Maher: That is right. I don't intend—if my office [fol. 486] is broken into again, I don't intend that that ledger shall be found in my right-hand drawer or any place else in the office.

Mr. Bowles: That book, as I understand it, shows the receipts from the various Regional Counsel—

Mr. Maher: That is right.

Mr. Bowles: —or Legal Counsel, as they are now called?

Mr. Maher: Yes, sir.

Mr. Bowles: From what date to what date, do you know?

Mr. Maher: Well, that ledger—now, I don't remember the date of the first entry in that, but it's a complete record of all the transactions.

Mr. Bowles: Now, these three volumes which you have produced and that record which is in your possession at your home, do they consist of all the records, financial, relating to the operation of the Legal Aid Department and the now styled Department of Legal Counsel?

Mr. Maher: Well, that particular ledger—now, as I stated, I don't know the date of the first entry in it, but it's a complete record. From whatever date the first entry was made, it encompasses—

Mr. Bowles: Well, what I am getting at is the four books [fol. 487] I have described—

Mr. Chase: Excuse me just a minute. Off the record.

(Discussion, off the record.)

Mr. Bowles: Let's get back on the record and just let me identify what books you do have. You have these three books which you have produced before me. Do you have this ledger book in your home—

Mr. Maher: Yes, sir.

Mr. Bowles: —which shows all the contributions to the Legal Aid Department or from Regional Counsel and other information, and you don't know offhand how far it goes back?

Mr. Maher: No, I don't know just exactly when the first entry was made in that.

Mr. Bowles: Do you have any other records besides the four volumes that I have just described pertaining to the financial operations of the Legal Aid Department of the Brotherhood of Railroad Trainmen?

Mr. Maher: No, we do not. The whole record—now, these, as I stated before, are entry books.

These are just for the daily entries from which you [fol. 488] later took the figures and entered them into the main ledger book, is that right?

Mrs. Clark: Yes, sir.

Mr. Bowles: What does this main ledger book contain?

Mr. Maher: As I stated, all of the receipts and disbursements in connection with the operation of the department.

Mr. Bowles: That is the book you have at home?

Mr. Maher: That's the one I have at home.

Mr. Bowles: Now, are there any records here showing, say, payments to Regional Investigators?

Mr. Maher: Not here. Well, now, we have those deposit sheets where we deposited the checks and anything that came in into the General Fund—

Mrs. Clark: Yes.

Mr. Maher: —or the Protected Fund. We have those.

Mr. Bowles: Could I see those?

Mr. Maher: Yes.

Would you get them, please, Virginia?

Mrs. Clark: For which year?

Mr. Bowles: How many books does it involve and for [fol. 489] how far back does it go?

Mr. Maher: This doesn't involve any books. These are the deposit sheets which I made to the General Fund, one copy—well, get them, Virginia. It's easier to show them than explain them.

This is for the year 1960, I believe, the year that's in question.

Mr. Bowles: Would you state this young lady's name into the record, please?

Mr. Maher: Mrs. Virginia Clark.

The Notary: C-l-a-r-k?

Mrs. Clark: That is correct.

Mr. Bowles: Could I see those, please?

Mr. Maher: Yes.

(Mrs. VIRGINIA CLARK was duly sworn by the Notary.)

Mr. Bowles: Now, how far back do these records go, Mr. Maher?

Mr. Maher: Well, those kind of records have been kept ever since I have been in this job, and I have reason to believe that they were kept by my predecessor and by his predecessor.

Mr. Stallard: May I ask him some questions?

How do you calculate the pro rata contribution by the [fol. 490] former Regional Counsel and now Legal Counsel? The contributions that were made, when do you calculate that?

Mr. Maher: Well, when those records were being kept and counsel were notified as to their proportionate share

for the operation of the department; the figures were based upon all the settlements which had been made by all of the Brotherhood Legal Counsel for the calendar year.

Mr. Stallard: When would you send them a bill for their pro rata share of the percentage?

Mr. Maher: Well, that was later broken down after the end of the year. That was later broken down into how much each of the Brotherhood counsel—the number of cases they had settled, the amounts they had recovered, and so forth, and the entire total was figured at 100 percent. Then I am not an accountant or too good at figures, so I took those figures to our Chief—John's title is Chief Auditor?

Mr. Chase: Yes, General Auditor.

Mr. Maher: —General Auditor, John Orpin, and had those broken down into percentages relating to the grand total of 100 percent.

Mr. Bowles: Now, what period of time are you talking about?

[fol. 491] Mr. Maher: That's for a year. A one-year period, that is correct.

Mr. Bowles: And that continued up through 1960?

Mr. Maher: No, that continued through 1958. There have been no notices sent to any of the counsel since December 31, 1958.

Mr. Bowles: Now, you have produced a file.

Mr. Stallard: Let me ask him to clarify it.

You say through '58. Now, did you receive any money in '59 or '60?

Mr. Maher: Oh, yes. There was some money received in—well, in fact, practically all of the money was received in '59 for the business that was done in '58.

Mr. Stallard: Well, did you receive any money as far as investigators were concerned—

Mr. Maher: Oh, yes.

Mr. Stallard: —from the Regional Counsel?

Mr. Maher: In 1960, we received the money which was to cover the salaries of the investigators who were at the time on the Brotherhood payroll.

[fol. 492] Mr. Stallard: Why were they on the Brotherhood payroll?

Mr. Maher: Well, the reason—the main reason is that I would say every one of the investigators who was on the Brotherhood payroll held seniority on some railroad, and in order to keep their record in good standing with the Railroad Retirement Board as being in an employment connection with a railroad, being in an employment connection with the Brotherhood is the same as an employment connection with the railroad.

Mr. Stallard: Do I understand that—

Mr. Bowles: Mr. Stallard, may I suggest that we take up this questioning in some order rather than you asking him questions and I asking him questions—

Mr. Stallard: All right.

Mr. Bowles: —intermittently!

You have produced here, Mr. Maher, a file folder dated 1960 entitled, "Deposit slips"—

Mr. Maher: Yes.

Mr. Bowles: —in which, taking the first page, it contains an addition or adding machine list, and then the first page says, "This is to cover disbursements to George J. [fol. 493] Rerat, Lodge 625, through 1960, per President Kennedy's letter of May 26, 1960." Do you offhand know what that letter of May 26th is?

Mr. Maher: Well, as far as that's concerned, about George Rerat, George Rerat was an investigator on the Brotherhood payroll up until the time all of the investigators were taken off the Brotherhood payroll, which was April 30, 1960.

Mr. Bowles: Now, you state that George J. Rerat was a Regional Investigator?

Mr. Maher: He was.

Mr. Bowles: In this file is a letter of April 18, 1960, addressed to Mr. Kennedy and Mr. Chase. It says, "Dear Sir and Brother: Kindly deposit the attached check in the amount of \$250 to the General Fund of the Brotherhood." And there is a penned notation on the right-hand corner, "N. J. Armstrong, Number 375." Was he a Regional Investigator?

Mr. Maher: No, that is a check that was sent in to cover the cost of the investigation that was made in the case of N. J. Armstrong.

Mr. Bowles: Of Lodge Number 375?

Mr. Maher: Yes.

Mr. Bowles: And it states also, "Investigation expense."

Mr. Maher: Yes, that is right.

[fol. 494] Mr. Bowles: And then it says, "Henslee & Henslee contract."

Mr. Maher: That was the contract, yes.

Mr. Bowles: Do I interpret this correctly as a check sent in by Henslee & Henslee to reimburse the Brotherhood?

Mr. Maher: By the direction of the client, yes.

Mr. Bowles: To reimburse the Brotherhood for what expense?

Mr. Maher: For the investigation that was made by a Brotherhood investigator.

Mr. Bowles: Now, I also have a letter in the same file of April 5, 1960. On the right-hand top corner it says, "Yaeger & Yaeger salaries." Who are Yaeger & Yaeger, do you know?

Mr. Maher: Yaeger & Yaeger are Brotherhood attorneys in Minneapolis, Brotherhood Legal Counsel.

Mr. Bowles: And that letter is the same form as the other previously read, but the amount of money is \$1000. What does this "salaries" represent?

Mr. Maher: That salary represents the salary of the [fol. 495] Brotherhood Investigator in Yaeger & Yaeger's area.

Mr. Bowles: Do you happen to know who that fellow is?

Mr. Maher: Yes. Tom Yaeger.

Mr. Bowles: On April 1, 1960, a letter of that date, of similar form, the amount of the check being \$117.24, and in the right-hand top corner it is marked, "Hildebrand salaries." Would that be to a man like Harry Dragmire?

Mr. Maher: Dragmire or Bockhold, it might be either one of them.

Mr. Bowles: Of course, sir, I haven't had time to go through this file completely, but does it, to your knowledge, also contain similar letters with relation to, say, Mr. Bernard Savage?

Mr. Maher: Yes.

Mr. Bowles: And for the payment of his investigator, Mr. Norris W. Tingle?

Mr. Maher: Yes. However, when you say, "his investigator," when Tingle was on the Brotherhood payroll, he was on the payroll as a Brotherhood Investigator.

Mr. Bowles: I am incorrect. Then I should have said the Brotherhood's Investigator assigned to Mr. Bernard M. [fol. 496] Savage?

Mr. Maher: Well, he was assigned to Mr. Bernard M. Savage's jurisdictional area.

Mr. Bowles: Now, do you have a similar file as this pertaining to 1961?

Mr. Maher: Well, I think we could dig up—now, did you say '61?

Mr. Bowles: '61, yes.

Mr. Maher: There have been no deposits in 1961.

Mr. Bowles: There have been none?

Mr. Maher: No.

Mr. Bowles: When did these deposits discontinue?

Mr. Maher: Now, if I am not mistaken, there were some deposits came in in 1960, which were to be applied on the balance of 1958.

Mr. Bowles: Or maybe another previous year?

Mr. Maher: Well, I don't think any earlier than 1958.

Mr. Bowles: But most of these letters represent figures to be applied to the balance of 1960?

Mr. Maher: There was no balance of 1960.

[fol. 497] Mr. Bowles: Would you have or could you get photostatic copies of these checks or would they have been returned through the bank to the man who drew them?

Mr. Maher: I don't know whether—that's a department that I don't know anything about.

Mr. Bowles: How far back do records go of a similar nature to this one, "1960, deposit slips"?

Mr. Maher: Well, I'd say they don't go back any farther than five years insofar as our records are concerned, for the reason that we eventually run out of space for records here and we aim to keep—

Mr. Bowles: Then you take them to the basement?

Mr. Maher: We take them to the basement.

Mr. Bowles: You have about two years more in the basement and then out they go?

Mr. Maher: When the custodian down in the basement calls and tells me, "We will have to have some more room down here," then the girls go down and they start with the oldest files and destroy any that we think couldn't be of any value for references, up to—we aim to keep them at [fol. 498] least seven years.

Mr. Bowles: Could you produce copies of files similar to these back to the five years of the seven years?

Mr. Maher: Do you think we have those in our possession, Virginia?

Mrs. Clark: I don't know if we have these, Bob, except the time that I took over. From the time that I took over in the job. I can't go back any further.

Mr. Bowles: I don't want to ask you the impossible, but, on the other hand, I would like to have them as far back as you are able to produce them.

Mr. Maher: Well, we will make every effort to get them and produce them.

Mr. Bowles: Now, then, do I understand that this book Number 1, book Number 2, and book Number 3, and the large journal book that you have at home, and files back approximately seven years from 1960, similar to this file, "1960, deposit slips," would then represent all of the financial records of this department relating to the incoming money and the outgoing money insofar as you have or know of?

Mr. Maher: Well, I would say yes, insofar as my knowledge [fol. 499] edge is concerned.

Mr. Bowles: There are no other records?

Mr. Maher: To my knowledge, there are none, no.

Mr. Bowles: I am sorry, I don't remember your name.

Mrs. Clark: Clark. Mrs. Clark.

Mr. Bowles: Mrs. Clark, would you subscribe also to that statement of Mr. Maher's?

Mrs. Clark: Yes, sir.

Mr. Bowles: And what he has stated is true, so far as you know?

Mrs. Clark: So far as I know, the three books that you mentioned and those records are the only financial statements from this department that I have any knowledge of.

Mr. Bowles: And this journal book or ledger book that Mr. Maher has at home, you know of that?

Mrs. Clark: Yes, sir.

Mr. Bowles: And they are all of the financial records of this department?

Mrs. Clark: Yes, sir, to the best of my knowledge.

Mr. Bowles: How long, Mr. Maher—I know this young [fol. 500] lady doesn't want to stay here all night, but how long would it take to get those up?

Mr. Maher: Now, that would be a question. I understand that our representative was reprimanded by the Judge down there because of the fact that I answered one of the questions by stating that—do you want this on the record?

Mr. Bowles: Yes, sir.

Mr. Stallard: Yes.

Mr. Maher: The request was made for a form that was issued in the year 1930, and, to my knowledge, there were no such forms in existence. My answer to that was these forms—I don't know my exact words, but these forms have long since either been used up or destroyed and replaced by more modern types of forms. And I think I added a little further to that statement by stating to dig back through records that may not be here to attempt to find such a form would entail the tying up of this department and it would seriously interfere with the normal operations of the department.

That's substantially the answer, wasn't it, Beecher?

And I understand that the Judge—and I will add a little bit further—I made every effort to produce everything that [fol. 501] was requested, but I understand the Judge reprimanded Beecher for my not producing that for him.

Mr. Bowles: I was present during that session and I don't think that Mr. Stallard was reprimanded, but the Judge just requested that the form be produced, if possible.

Mr. Maher: Well, then—

Mr. Chase: Let me ask you a question, Bob. As you know, I don't know anything about the Legal Aid Depart-

ment, but I have heard the questions pro and con all week in the court. Mr. Bowles' father refers to April the 1st, 1959, as the magic date, I think he called it. Have there been any contributions made by the Regional Counsel to the Department of Legal Counsel or Legal Aid Department since 1958 as such?

Mr. Maher: Well, yes, since 1958 there have been.

Mr. Chase: But none for the year '59?

Mr. Maher: No. There were none paid for the year 1959.

Mr. Stallard: Well, did you receive some contributions—when would they come in? Do you know when his department, meaning Mr. Chase's department, would get [fol. 502] them, or would you know?

Mr. Maher: Yes, whenever any sort of a contribution came in, you noticed on those slips that Mr. Chase is notated as receiving a copy of that. It's addressed to President Kennedy and W. E. B. Chase, General Secretary and Treasurer.

Mr. Bowles: And that money, as I understand it, was then put into the Protective Fund?

Mr. Maher: The General Fund.

Mr. Bowles: The General Fund.

Mr. Chase: Well, as far as contributions that came to my department, there were none as such after 1958? Anything that was received in 1959 was a 1958 payment?

Mr. Maher: It applied on 1958 business, with the exception, now, on occasion our counsel asked me to produce supplies for them, such as letterheads and envelopes, Brotherhood envelopes, and so forth. When those were produced, we charged them for them. There have been two or three checks come in paying for the supplies they ordered.

Mr. Stallard: Well, they wouldn't amount to very much?

Mr. Maher: Well, no. I think the largest one—
[fol. 503] Mr. Bowles: Let me see if I understand that correctly, Mr. Maher, that on occasions, and I understand not too numerous, but on occasions you have received checks from Regional Counsel for Brotherhood stationery or letterheads—

Mr. Maher: And supplies.

Mr. Bowles: —sent to them? And supplies?

Mr. Maher: Yes.

Mr. Bowles: You mean by that supplies, things like this FLA-2 form and FLD-2?

Mr. Maher: The forms, yes. And they are charged by the Brotherhood for those supplies.

Mr. Stallard: Well, let me try to find out. Mr. Chase has stated, and I think we have stated several times, that Regional Counsel did not make any contribution after April 1, 1959. Now, when would you receive those contributions if they were cut off exactly April 1st? When would counsel send them to you?

Mr. Maher: Well, would you take this off the record a minute?

Mr. Bowles: I would prefer to have it all on.

Mr. Maher: Well, then I will repeat it for the record, [fol. 504] but I want to make the remark and then you decide whether you want it on the record.

Mr. Bowles: I would prefer to have it on the record, sir, regardless of the nature of the remark. And if you are concerned about phraseology, I would be most happy to give you as much time as necessary to formulate the statement that you have in mind.

Mr. Maher: Well, I will say this: The operation of this department at the present time is based upon the opinion rendered by the Supreme Court of the State of Illinois in, I believe, May of 1958, if I am not mistaken, wherein the opinion stated that the Brotherhood may do certain things and may not do certain things. One of the things that the Brotherhood may ~~do~~ is to maintain a Legal Aid Department, which has since—the title has since been changed to the Department of Legal Counsel, and that representatives of the Brotherhood may inform an injured member of the Brotherhood or the surviving dependents of a member of the Brotherhood that the Brotherhood does have a lawyer known as a Brotherhood Legal Counsel located at such and such a place to whom they may go if they so desire.

The opinion further stated that as of July 1, 1959, the [fol. 505] Brotherhood must have its operation in order to

comply with the provisions of this opinion, and that after July 1, 1959, the Legal Counsel no longer make any contributions to the Brotherhood for any purpose and that the maintenance of the operation of the department must be paid for by the Brotherhood.

And I will say this—

Mr. Bowles: Excuse me, sir. Do you know what fund of the Brotherhood that is paid out of?

Mr. Maher: Well, that is something that I can't answer definitely. I would presume that it comes out of the General Fund of the Brotherhood.

Mr. Bowles: The checks for the operation of this department are issued to you by Mr. Chase or Mr. Chase's department?

Mr. Maher: Well, the checks are signed by the President of the Brotherhood as the President and by the General Secretary and Treasurer.

Mr. Bowles: And by Mr. Chase?

Mr. Maher: Yes, sir.

Mr. Stallard: Now, I want to get back to my question.

Mr. Chase: Bob, I had the information to explain to counsel and Mr. Bowles, Jr., and the 3rd in Richmond, but they wouldn't take advantage of the fact that I would give them [fol. 506] this information, but I told them since April 1, 1959, there have been no contributions whatsoever except those involving investigators.

Mr. Bowles: Well, Mr. Chase, don't think for a moment that I don't intend or Mr. Bowles, Jr., does not intend to take advantage of the information that you had with you in Richmond, but we also, as you well understand, wanted additional information which you did not bring with you.

Mr. Stallard: Well, let me get back. I still ask did you receive money, a contribution, up to July 1, 1959?

Mr. Maher: Yes, I think we did. What I started to tell, that I asked you to take off the record for a minute—and I will say it for the record—President Kennedy at a meeting of all of our Legal Counsel told them that he wanted them to put out every effort to get themselves in order so that the Brotherhood could be in order by the 1st of April, 1959, but that we did have until July 1, 1959, as the absolute deadline.

Mr. Bowles: Under the Illinois decision?

Mr. Maher: Yes, sir.

[fol. 507] Mr. Bowles: Now, what is the function of this department right now today?

Mr. Maher: Well, the function of the department is to keep records of every accident occurring on any railroad in the United States upon which members of our organization are employed, and that is practically every railroad in the United States, wherein the employee member of the Brotherhood is injured in an on-the-job accident.

Mr. Bowles: What other function does this department have?

Mr. Maher: The other function is to exert every effort of the Brotherhood to afford every protection the Brotherhood has available to that member or to the surviving dependents.

Mr. Bowles: Does your department in any way advise an injured member as to what his rights might be under, say, F.E.L.A. or the Safety Appliance Act or the Boiler Inspection Act?

Mr. Maher: Well, the department as such don't issue that sort of instructions. However, I will say that I have advised members, both orally and by letter—

Mr. Bowles: You realize, now, I am speaking now as of your operation of this department as of today?

[fol. 508] Mr. Maher: Yes.

Mr. Bowles: In 1961?

Mr. Maher: Yes, sir.

Mr. Bowles: And you have advised them orally and by letter to what effect?

Mr. Maher: Well, not in 1961, no. I have advised members that it would be advisable for them to get an opinion from a competent and honest attorney as to their rights.

Mr. Bowles: In 1961? You mean you have written a man in 1961, as I understand it, advising him that he should get hold of a competent attorney to advise him as to what his rights are?

Mr. Maher: Well, I don't recall writing any such letter in 1961.

Mr. Bowles: Well, in 1960?

Mr. Maher: Well, I may have in 1960. I don't particularly pick out any specific year.

Mr. Bowles: At the same time that you write that letter, do you also advise him who the Brotherhood Regional Counsel is in his territory?

Mr. Maher: I have done that, yes.

Mr. Bowles: In 1960?

Mr. Maher: I may have done that in 1960.

[fol. 509] Mr. Bowles: And in 1961, do you recall?

Mr. Maher: I don't recall writing any such letters in 1961. I may have. I don't have that good a memory to remember every letter or the contents that I write. I write numerous letters.

Mr. Bowles: No one does.

Mr. Maher: No, sir.

Mr. Stallard: Let me ask Mr. Maher some questions. How old are you, Mr. Maher?

Mr. Maher: I am—I was 69 years old July 15th, this year.

Mr. Stallard: You talk about investigators. You say you no longer have investigators on the payroll?

Mr. Maher: Yes, sir.

Mr. Stallard: Counsel asked you something about Harry Dragmire. Is he still on your payroll?

Mr. Maher: No, he is not.

Mr. Stallard: Do you know anything about him?

Mr. Maher: Well, yes. When did I know anything about him?

Mr. Stallard: Do you know him? Did you ever meet him?

[fol. 510] Mr. Maher: Oh, yes, I have met Dragmire, very personally. Know him personally.

Mr. Stallard: He is no longer on your payroll?

Mr. Maher: No, sir.

Mr. Stallard: Do you know any reason why?

Mr. Maher: Yes, he was taken off the Brotherhood payroll as an investigator the same date that all the rest of the investigators were taken off.

Mr. Bowles: And that was the only reason he was taken off?

Mr. Stallard: Wait a minute. I am going to ask him.

Mr. Bowles: Would you go ahead and answer the question for the record, please, Mr. Maher?

Mr. Maher: However, he was permitted to retain his investigator's card by instructions of the President that he might be called upon to perform some service for the President of the Brotherhood.

Mr. Stallard: Well, let me ask you, who performs investigating now? Who investigates now?

Mr. Maher: Well, officially I don't know.

[fol. 511] Mr. Stallard: Well, do you have investigators now?

Mr. Maher: We have no investigators now.

Mr. Stallard: Well, who tells you that somebody has been hurt?

Mr. Maher: Oh, the secretaries of the subordinate lodges in the United States.

Mr. Stallard: Well, do the secretaries have investigators' cards?

Mr. Maher: Some of them may have.

Mr. Stallard: What about Virginia? Do you know anything about Virginia now?

Mr. Maher: I don't know of anyone in the State of Virginia that is carrying an investigator's card.

Mr. Stallard: Well, do they send the Form LA-1? Does the Secretary send that?

Mr. Maher: The secretary of the subordinate lodge, yes.

Mr. Stallard: Well, is the secretary an employee of this department?

Mr. Maher: No, the secretary of a subordinate lodge is not an employee of this department of the Brotherhood.

[fol. 512] Mr. Stallard: Do you know a man by the name of Byerton, who is General Chairman of a road down in Georgia?

Mr. Bowles: B. G. Byington.

Mr. Maher: Byington.

Mr. Stallard: Byington. Do you know him?

Mr. Maher: Yes.

Mr. Stallard: Is he an employee of this department?

Mr. Maher: He is not.

Mr. Bowles: May I interrupt there, Mr. Stallard, so we don't lose the train of this?

The work that Mr. Byington does on Grand Lodge business, he is reimbursed by the Grand Lodge for that, isn't he?

Mr. Maher: Not by direction of this department or not by this department. If he receives any pay from the Brotherhood, it's in his capacity as a General Chairman.

Mr. Stallard: Well, do you know whether he is an employee of the General Brotherhood?

Mr. Chase: Bob, what Mr. Bowles tried to ask you was if Byington was an employee of the Grand Lodge?

[fol. 513] Mr. Bowles: No, I did not. That's what Mr. Stallard asked him.

Mr. Chase: That's what Mr. Stallard wanted to know, is Byington, to your knowledge, an employee of the Grand Lodge?

Mr. Maher: To my knowledge, he is not an employee of the Grand Lodge.

Mr. Bowles: However—

Mr. Stallard: Well, when you say, "General Chairman," what is he General Chairman of, a Local Lodge?

Mr. Maher: A General Chairman is elected by the members employed on the railroad that he represents to represent them as their General Chairman. He is the Chairman of the General Grievance Committee on that particular railroad.

Mr. Bowles: Have you ever held that position, Mr. Maher?

Mr. Maher: Never as General Chairman. I have been a Local Chairman.

Mr. Stallard: Well, the General Chairman, does that cover the whole railroad? He is elected by the people that work on the railroad?

Mr. Maher: By the members of the Brotherhood employed on that railroad.

[fol. 514] Mr. Stallard: Well, is that a lodge thing or is that several lodges?

Mr. Maher: Well, that encompasses every lodge in which members—or in which employees of that railroad belong.

I don't know offhand just how many lodges—what is that, the Central of Georgia?

Mr. Stallard: Yes.

Mr. Chase: I think it has two, Bob.

Mr. Maher: Beg pardon?

Mr. Chase: I think it has two lodges. Yes, a road lodge and a yard lodge. But as a General Chairman, as such he isn't an employee of the Grand Lodge?

Mr. Maher: No.

Mr. Bowles: But he does—well, let me ask you this. Are you familiar with the functions of a General Chairman on any railroad?

Mr. Maher: Yes, sir, sojewhat.

Mr. Bowles: And they do on occasions do specific things for the Grand Lodge, do they not?

Mr. Maher: On behalf of their members.

Mr. Chase: Not unless they are deputized, Bob. He is trying to get you to say that they do things for the Grand Lodge.

[fol. 515] Mr. Bowles: Just a moment, Mr. Chase. Let him answer his own question without your prompting.

Mr. Stallard: He may not know.

Mr. Chase: I am interested in this.

Mr. Stallard: He might know, Mr. Chase.

Mr. Chase: I think I know something about this business, and Bob does, only your questions, the way they are slanted, might not be answered—

Mr. Bowles: There is no intention to slant my questions. I am merely trying to find out what the fact is.

Mr. Stallard: This witness might not know.

Mr. Chase: I said Mr. Bowles, the 3rd, is trying to get Mr. Maher to say that the General Chairman is an employee of the Grand Lodge and that isn't true.

Mr. Maher: Well, I have already answered that, that Mr. Byington or no General Chairman of the Brotherhood of Railroad Trainmen is an employee of the Grand Lodge of the Brotherhood.

Mr. Bowles: Except when he would be on Grand Lodge business?

Mr. Maher: That I don't know. I can't answer that question.

[fol. 516] Mr. Bowles: Well, can you answer the question, Mr. Chase?

Mr. Chase: Not unless he was deputized by the President.

Mr. Bowles: That's all I wanted to know.

Mr. Chase: Mr. Byington isn't deputized by the President.

Mr. Bowles: Do you have something else you wanted?

Mr. Stallard: No, I don't.

Mr. Bowles: Let me ask you this, Mr. Maher. You stated you knew Harry Dragmire?

Mr. Maher: Yes.

Mr. Bowles: I believe you said you knew him well, that you had met him?

Mr. Maher: I have met him on several occasions, yes.

Mr. Bowles: Do you know who employs him right now?

Mr. Maher: No, I don't.

Mr. Bowles: When was the last time you saw him?

Mr. Maher: Oh, that has been about two years.

[fol. 517] Mr. Bowles: Well, now, getting back to the original purpose of why we came here, these records, I believe you have stated that these file folder records of which you probably have seven years and the three books which you have presented here and the journal which you keep at home are all of the financial records that you have as to the operation of this department?

Mr. Maher: Yes, sir.

Mr. Bowles: Now, how long would it take you to get together the seven years of these file folder records?

Mr. Maher: Now, that's a hard question to answer. I don't know. We would have to probably do a little digging to find these previous years. That is, these kind of deposit slips back that far. I don't know how far back we can find them.

Mr. Bowles: Well, could you give me an estimate as to the amount of time it would take?

Mr. Maher: Oh, I'd say it might be done within the next week. I wouldn't give that as a definite answer, because of the fact that I am going to leave the office on October the

18th and I am going to be gone more than likely until the 24th.

[fol. 518] Mr. Bowles: Where are you going, Mr. Maher?

Mr. Maher: I am going back to my home in Illinois.

I might add a little bit further to that statement. I am going back for the purpose of attending the Illinois Joint State Meeting of the Brotherhood, which is being sponsored by the Lodge of the Brotherhood to which I belong and which has been named in my honor. I'd like to have that in the record.

And, furthermore, if you care to have this in the record, this is the plaque on the wall denoting that I have been accorded that honor.

Mr. Bowles: Now, how long would it take you to go to your house and get this book that you have out there?

Mr. Maher: Well, depending on the connections I could make. It usually takes about 30 to 35 minutes for me to get home on the bus and the Rapid Transit, and I have to walk a block from where I get off to my home, and it would take me about two minutes to pick up the book and get back, and depending upon the connections I could make again. It would probably more than likely consume at least two hours.

Mr. Bowles: Well, could you get that book and deliver [fol. 519] it to Mr. Chase so that he could bring it to Richmond?

Mr. Maher: By what time?

Mr. Bowles: I believe that the Court expressed its preference that we have these records there at 10:00 o'clock October the 13th, which is tomorrow.

Mr. Maher: Well, off the record, now, again.

The Notary: Is this off the record?

Mr. Maher: May I ask Mr. Chase?

Mr. Bowles: I would just as soon it all be on the record.

Mr. Maher: Oh, well, hell, if you don't want to cooperate a little bit with me—

Mr. Bowles: It's not a question—

Mr. Maher: What I wanted to ask Mr. Chase, if it is his intention to go to his home before he returns to Richmond?

Mr. Chase: I don't know, Bob. It all depends if I can get that 8:25 plane, I won't. Otherwise, I will.

Mr. Maher: Well, upon that would depend whether I could get the ledger and get it in Mr. Chase's possession.

Mr. Bowles: But you will deliver that ledger to [fol. 520] Mr. Chase to take to Richmond?

Mr. Maher: I don't know whether it can be in time to catch the plane or not. If he has to catch that plane, I don't know whether I can get it and get it into his hands by that time or not. That's why I wanted to ask you that question off the record. I can make every effort, and if Mr. Chase is obliged to miss his plane because of the fact that I can't get it into his hands—

Mr. Bowles: For the record, that is also the plane I would like to take back, too.

Mr. Maher: And understand this, I don't want to deliberately do anything that would cause any of you to miss your plane, but I can't guarantee what kind of connections I can make to get out home.

Mr. Bowles: There are other planes that we could take if the necessity arises.

Now, as far as these other records—

Mr. Maher: Now, pardon me just a minute before you ask me another question. Again, put this on the record. I can call my wife, if necessary, and ask her if she will pick up the ledger and drive it down here and bring it up in our car.

Mr. Stallard: I think that would be very well. It would [fol. 521] save us some time. We have got to go back upstairs.

Mr. Bowles: I hate to inconvenience Mrs. Maher.

Mr. Maher: I hate to, too.

Mr. Stallard: You have been sick and I imagine you better do that, Bob. Your doctor wrote and told me.

Mr. Maher: That is right. And, you know, I am trying to control myself. I am noted for having a little temper—and I am trying to control it.

Mr. Stallard: You have got an Irishman's name and I would think you have a little temper.

Mr. Maher: And I don't want to get upset here, because I know dang well it wouldn't do any good.

Mr. Bowles: If you could do that, I would appreciate it.

Mr. Maher: I want to cooperate in any way.

Mr. Bowles: I would appreciate it very much.

Mr. Maher: I will have to go next door and whether that office is open or not I don't know.

[fol. 522] Mrs. Clark: I will see.

Mr. Maher: Otherwise I will have to leave the floor to get a dial phone. I can't call through the board.

Is she there?

Mrs. Clark: No, but the door is open.

Mr. Bowles: I think we can discontinue this, Mr. Ferris.

(Discussion, off the record.)

DISCUSSION AND TESTIMONY OF MRS. VIRGINIA CLARK WITH COUNSEL

Mr. Stallard: Mrs. Clark, I hand you what has been turned over to us by you, which shows a series of letters addressed from May the 27th, 1960, running through—well, they are not in logical sequence, they run backwards to January 7, 1960, which indicates money has come into this office for investigation fees concerning the cases and you have put notations on them. For example, you have on a letter addressed to W. P. Kennedy and W. E. B. Chase, General Secretary, April 18, 1960, a copy to the cashier, with check, \$250, and you have in somebody's handwriting, "H. J. Armstrong, Number 375, investigator expense, Henslee & Henslee, Cont." Would you explain what those things mean?

Mrs. Clark: This was a check received from Brother Armstrong, a member of Lodge 375, for investigation of [fol. 523] his injury case. I have no date when he was injured or anything like that.

Mr. Bowles: Well, could you give us any estimate of when that accident happened?

Mrs. Clark: I am afraid I couldn't give an accurate estimate. We have cases in our files dating back to 1950 that haven't been settled, that are still open cases, because of crowded conditions on the court and what-not, so I couldn't give an accurate estimate.

Mr. Bowles: Assuming you had an investigator to investigate in 1961, have you received any money on an investigation for 1961 or 1960?

Mrs. Clark: Not 1960 and not 1961.

Mr. Bowles: Well, then, do I understand the investigation reports which you have, that the money covered periods prior to '60 and '61?

Mrs. Clark: Yes, sir.

Mr. Bowles: I would like to ask Mr. Maher on that after you might examine her.

I believe you said that that check came from Brother Armstrong?

Mrs. Clark: Yes, as far as this case goes.

Mr. Bowles: What does the notation "Henslee & [fol. 524] Henslee" on there mean?

Mrs. Clark: That's the legal counsel who is handling the case for Brother Armstrong.

Mr. Bowles: Let me see this document. Take this letter of April 5, 1960, to Mr. Kennedy and Mr. Chase from Mr. Maher. "Please deposit attached check in the amount of \$1000 to the General Fund of the Brotherhood," with the notation, "Yaeger & Yaeger, salaries." Where was that check received from?

Mrs. Clark: From the notation, I would take it to be received from Yaeger & Yaeger for a previous balance on salaries that they perhaps didn't pay up before they were—when they were due.

Mr. Bowles: And the date of this letter is April 5, 1960?

Mrs. Clark: Yes, sir.

Mr. Bowles: And are these letters sent in within a short period of time after the check is received?

Mrs. Clark: It depends on whether or not I happen to be in the office at that time.

Mr. Bowles: Well, say, if the check is received, within a month they would be sent in, would they not?

Mrs. Clark: Yes, I would imagine so.

[fol. 525] Mr. Bowles: And these other letters, one letter dated April 1, 1960, to Mr. Kennedy and Mr. Chase from Mr. Maher, with the notation on it, "Hildebrand, salaries," that would be the same thing, a check received from Mr. Hildebrand?

Mrs. Clark: Yes, sir.

Mr. Bowles: Perhaps some time in March of 1960?

Mrs. Clark: Yes, sir.

Mr. Chase: Those would be for investigators, wouldn't they?

Mrs. Clark: Yes, sir.

Mr. Bowles: And I believe you stated when Mr. Stallard asked you, that these could be for accounts, say, that you had cases pending for from 1950, I believe?

Mrs. Clark: Yes.

Mr. Bowles: They could also be for cases that have been investigated in 1960, could they not?

Mrs. Clark: Yes, sir.

Mr. Chase: Up to April 30th?

Mrs. Clark: Oh, yes, in the first part of 1960.

Mr. Bowles: Would you let the record show, Mr. Ferris, [fol. 526] that the answer to the question was suggested by Mr. Chase?

Mr. Chase: It wasn't suggested by Mr. Chase. Mr. Chase wanted to make sure that she gave the correct answer.

Mr. Bowles: Dictated by Mr. Chase.

Mr. Chase: It wasn't dictated.

Mr. Stallard: Are you through?

Mr. Bowles: Well, I was just looking through here just a moment.

Would you count the number of letters in here, please, ma'am?

Mrs. Clark: 24.

Mr. Bowles: 24 letters. And a sheet and a column of figures?

Mrs. Clark: Yes.

Mr. Bowles: And that is the content of your 1960 file?

Mrs. Clark: Yes, sir.

Mr. Bowles: I believe, Mr. Stallard, you stated you wanted to ask Mr. Maher some questions.

Mr. Stallard: I wanted to ask her another question.

Why haven't you received some subsequent to the last [fol. 527] date mentioned here, which I believe is May 27, 1960?

Mrs. Clark: Well, I couldn't answer that, because I don't know, sir.

Mr. Stallard: You haven't received any more since May, 1960, is that the last one?

Mrs. Clark: Yes, sir.

Mr. Stallard: This is October, 1961.

That's all.

I'd like to ask Mr. Maher—

Mr. Bowles: Well, I would like to ask one more question. Do you have a file similar to that for 1961?

Mrs. Clark: No, sir.

Mr. Bowles: The latest dated letter in there represents the latest money received by a Regional Counsel or Legal Counsel or an investigator or a Brother, I believe.

Mrs. Clark: It represents the latest check that we have received in this department.

Mr. Bowles: And your notations indicate from whom that check was received?

Mrs. Clark: Yes, sir.

Mr. Stallard: This letter of May 27, 1960, will you read the notation on it, please?

Mrs. Clark: "Rerat. For G. J. Rerat, 1 day per month, [fol. 528] organizing. Check 496."

Mr. Stallard: Well, now, what period of time would that have been for? Would you know?

Mr. Maher: Beecher, ask me that question.

Mr. Bowles: Well, in a moment, if we may.

Mr. Maher: Don't answer that. You can't answer that question.

Mrs. Clark: I can't answer it.

Mr. Stallard: You can't?

Mrs. Clark: No, sir.

Mr. Bowles: Who would that same letter indicate that that check was received from?

Mrs. Clark: George J. Rerat, to the best of my knowledge.

Mr. Bowles: And who is George J. Rerat, to the best of your knowledge?

Mrs. Clark: He was a former investigator, to the best of my knowledge.

Mr. Bowles: And Mr. George J. Rerat, then, sent money into this office for organizing?

Mrs. Clark: As far as the notation, I would take that to be what it would be for.

Mr. Bowles: These are your files. Would it not be a [fol. 529] more correct interpretation that that is money

sent in by somebody else to reimburse George J. Rerat for organization that he did?

Mrs. Clark: I couldn't answer that question.

Mr. Bowles: Well, would that be a positive interpretation of it?

Mrs. Clark: I couldn't answer that. That's your interpretation, not mine.

Mr. Bowles: But you have stated what you interpret?

Mrs. Clark: I don't know what this check was sent in for.

Mr. Bowles: Well, then, your statement in response to Mr. Stallard's question was likewise a sort of a shot in the dark as to what it might be?

Mrs. Clark: Yes.

DISCUSSION AND TESTIMONY OF CHARLES R. MAHER WITH COUNSEL

Mr. Stallard: No, Mr. Maher, you have heard the questions I asked Mrs. Clark. Can you make any explanation of this letter of May 27, 1960, which has some notation on it which you might not be able to read?

Mr. Maher: This is the letter just referred to to Mrs. Clark?

Mr. Stallard: Yes.

[fol. 530] Mr. Maher: That's why I asked you, Mr. Bowles, to ask me that question. I can explain it to you.

Mr. Bowles: Fine.

Mr. Maher: This letter should not be in this file, because it does not pertain to anything in connection with this department.

Mr. Bowles: Well, I take it, then, organizational work, you mean, going out into a craft and getting more members for your Brotherhood would be a perfectly natural function for any organization?

Mr. Maher: That is right.

Mr. Bowles: In fact, your existence would be dependent on that?

Mr. Maher: To further answer that question, George J. Rerat, a former investigator for the Brotherhood, has an employment connection with a railroad, and it is his desire

to keep in an employment connection with a railroad in order to keep himself in good standing with the Railroad Retirement Board. So therefore he asked the President of the Brotherhood if it would be possible for him to be placed upon the Brotherhood payroll as an organizer at one day per month, paid at the organizer's rate of pay, and that [fol. 531] he, in order to keep himself in good standing with the Railroad Retirement Board, would reimburse the Brotherhood for the amount that would be intended in keeping him on as an organizer.

Mr. Bowles: Now, as I understand that, then, that Mr. Rerat sent in that check so that it could go through this office and the deductions made for Railroad Retirement and Railroad Unemployment Compensation, and then the balance, what was done with the balance? Was that sent back to him?

Mr. Maher: What balance are you speaking of?

Mr. Bowles: Well, if that was sent in so that he could have his Railroad Retirement and his Railroad Unemployment and whatever else you all have, what happened to that money? Let me ask you that.

Mr. Maher: Well, it is sent out to him in a Brotherhood check, the same kind of a check that any Brotherhood employee receives, the President of the Brotherhood, the General Secretary and Treasurer, myself, my staff, any employee of the Brotherhood of Railroad Trainmen.

Mr. Bowles: I am not a railroader myself, and I don't necessarily understand these things, but, if I understand [fol. 532] you, he sent in \$251.76, and you or Mrs. Clark took that check?

Mr. Maher: Well, let me answer that by stating the reason it was sent to me was that George Rerat knew that it would get into the proper hands. In other words—

Mr. Bowles: Then you sent this check on up to Mr. Chase's department?

Mr. Maher: I did.

Mr. Bowles: And his department, say, deducted—these are imaginary amounts in my mind—say, \$10 for Railroad Retirement—

Mr. Maher: It's no imaginary amount, it's a real amount.

Mr. Bowles: Well, I don't know what the amounts are.

Mr. Maher: The amount is stated there, \$251 and some odd cents, which is to cover the check that is sent out to him every month, one day per month, at the organizer's rate; which is \$29 and something.

Mr. Bowles: But the check that is sent to him then by Mr. Chase's department is in a smaller amount than this check?

Mr. Maher: Yes.

[fol. 533] Mr. Bowles: That's what I thought.

Mr. Chase: Does it have anything to do with the Legal Aid Department?

Mr. Maher: None whatsoever.

Mr. Bowles: He already stated that this letter was improperly in this file.

Mr. Maher: That is right. That letter should have been directly addressed to President Whitney.

Mr. Bowles: For organizational work?

Mr. Maher: Yes.

Mr. Bowles: All right. I understand you now.

Mrs. Clark, one other question. All these notations on here are in your handwriting?

Mrs. Clark: Yes, sir.

Mr. Bowles: And how long have you been employed in the present position that you now have?

Mrs. Clark: Since June of '59.

Mr. Bowles: And who was your predecessor?

Mr. Maher: Rosemary.

Mrs. Clark: Rosemary Portic it is now. R-o-s-e-m-a-r-y. P-o-r-t-i-c. That's Mrs. Rosemary Portic.

[fol. 534] Mr. Bowles: Let me ask Mr. Maher one question now.

I believe in the Hildebrand case your deposition was taken in that case?

Mr. Maher: Yes, sir.

Mr. Bowles: And I believe, if I am not mistaken, that you went through all of the secretaries that you had had since you have been here and I believe you took it up to this Rosemary Portic, if my memory serves me correctly?

Mr. Maher: Well, I think Virginia was included. When she first took over—no, you were married when you took over this.

Mrs. Clark: Just barely.

Mr. Maher: When she came into the department she came in as Miss Virginia Brazeal.

The Notary: 'Spell that, please.

Mrs. Clark: B-r-a-z-e-a-l.

Mr. Bowles: I have no other questions.

Mr. Stallard: I don't either. Let's get going upstairs.

(Discussion, off the record.)

Mr. Bowles: Would you state the amount of time which you think it will require to produce the records which I have asked you to produce and when you think you [fol. 535] could get them up?

Mr. Maher: Well, Mrs. Clark and myself will make every effort to obtain all similar notices as are described in this folder—

Mr. Bowles: 1960 deposit slips folder?

Mr. Maher: Yes, dating back as far as we can find them, and we will have them in the mail addressed to the—

Mr. Bowles: Clerk of the Chancery Court of the City of Richmond.

Mr. Maher: —Clerk of the Chancery Court at the absolute latest in the evening mail of October 17th. We will try to get them on the 16th if we can.

Mr. Bowles: That's all that I can think of.

[fol. 536] Offices of: Brotherhood of Railroad Trainmen, 1428 Standard Building, Cleveland, Ohio, Thursday, October 12, 1961, at 6:20 p.m.

DISCUSSION AND TESTIMONY OF J. W. ORPIN WITH COUNSEL

Mr. Bowles: For the benefit of the record, just state, I believe, that you have the payroll records of all Regional Investigators and all personnel of the Legal Aid Department, now the Department of Legal Counsel, from 1954 to the present day.

Mr. Orpin: Through, to be exact, September 29th. Call it September 30th. That was the end of the month.

Mr. Bowles: 1961?

Mr. Orpin: 1961.

Mr. Bowles: And that you are not certain whether or not all of the previous payroll records are on microfilm or not, but that you believe that some of them are?

Mr. Orpin: That is right, I will make that statement, but, if you have got to know, I would rather make a check on it.

Mr. Bowles: No, I don't blame you.

Mr. Orpin: Because some things we do microfilm and some things we don't.

Mr. Bowles: And I believe you stated that you wanted to check as to what you did microfilm and what you did [fol. 537] not—

Mr. Orpin: That is correct.

Mr. Bowles: —before you made any positive statement as to what you had?

Mr. Orpin: That is correct.

Now, off the record.

The Notary: Is this off the record?

Mr. Bowles: Yes.

(Discussion, off the record.)

Mr. Stallard: Mr. Orpin, I ask you, what was the contribution coming into the General Fund from the Department of Legal Aid for the year 1959?

Mr. Orpin: The total refunds were \$158,080.06 for investigators and office expense.

Mr. Stallard: Now, what was the amount for the year 1960?

Mr. Orpin: \$23,410.31.

Mr. Stallard: What was the sum for the year 1961?

Mr. Orpin: '61, up to this date, nothing.

Mr. Stallard: Well, now, take that \$23,000, you have got it under the year of 1960. Would you know when that was received as far as the Department of Legal Counsel is concerned? Would you know for what period of time [fol. 538] that would be for?

Mr. Bowles: I believe the witness has already testified that he only gets the figures up here.

Mr. Stallard: Well, you don't know?

Mr. Orpin: You are correct, I wouldn't know what period.

Mr. Stallard: That's a good answer. I don't know whether I understand it or not.

(Discussion, off the record.)

Mr. Stallard: Let me ask you, then, Mr. Orpin, you say your receipts for the year 1960 were \$23,000—

Mr. Orpin: \$410.31.

Mr. Stallard: \$23,410.31. What were your disbursements?

Mr. Orpin: Investigators were paid \$18,169.07, and Railroad Retirement and Unemployment Taxes were paid based on their salaries, \$2190.35, or a total of \$20,359.42.

Mr. Stallard: Well, does that record show the deficit for 1961?

Mr. Orpin: For 1961?

Mr. Stallard: Yes.

Mr. Orpin: There is a deficit at the end of '60.

[fol. 539] Mr. Stallard: What was the deficit in '60?

Mr. Orpin: The deficit in '60 was \$55,701.21.

Mr. Stallard: What was it for '61?

Mr. Orpin: \$85,445.96.

Mr. Bowles: Do you have what it was for 1959?

Mr. Orpin: It was a surplus of \$11,185.76.

Mr. Stallard: Receipts for that year were how much?

Mr. Orpin: For 1959?

Mr. Stallard: Yes.

Mr. Orpin: \$158,080.06.

Mr. Stallard: That's all.

Mr. Bowles: I don't see any point in continuing the interrogation of this gentleman any further.

Mr. Stallard: No, I don't either.

(Discussion, off the record.)

Mr. Bowles: I just wanted to state that since we are all anxious to catch an 8:15 plane—is that it?

Mr. Chase: 8:25, I believe.

[fol. 540] Mr. Bowles: —8:25 plane, it is my understanding that you will bring with you whatever records that Mr. Orpin has compiled up to the last moment of your departure.

And if there are other records, Mr. Orpin, would you mail them to the Clerk of the Chancery Court of the City of Richmond? And I would suggest registered mail, return receipt requested, to protect your own records.

Mr. Orpin: Must that be done?

Mr. Chase: Are there any other records, John?

Mr. Orpin: Well, as I explained before, the only records are—and they would be letters from our Tax Department telling us how much we owe in Railroad Retirement and Unemployment Taxes, based on these salaries.

Mr. Bowles: I don't want that.

Mr. Orpin: You don't want that?

Mr. Bowles: No.

Mr. Chase: Then that's all the records there are?

Mr. Bowles: I am not interested in the Railroad Retirement Act.

Mr. Orpin: Well, that's the same as Social Security.

[fol. 541] DISCUSSION AND TESTIMONY OF CHARLES
R. MAHER WITH COUNSEL

Mr. Stallard: I want to ask Mr. Maher one more question on something involving him. Sit down just a minute.

Mr. Maher: O.K.

Mr. Stallard: There has been introduced here in Cleveland June 1, 1961, a purported letter from President Whitney to all counsel saying thereafter no contribution was going to be made to the Legal Aid Department. Now, I understand you came with the Legal Aid Department in '47?

Mr. Maher: Yes.

Mr. Stallard: What was the arrangement in '47 of the contributions of Legal Counsel to the Legal Aid Department?

Mr. Maher: Well, in '47, answering from the time I came in here, June 1 of '47, the contributions were the same as they were in 1958.

Mr. Stallard: Well, that was on a percentage basis?

Mr. Maher: Yes.

Mr. Stallard: Well, now, the letter which was sent out, what was the contribution in '46 when the letter was sent out?

Mr. Maher: Well—

[fol. 542] Mr. Bowles: He was not here in '46.

Mr. Stallard: He wasn't here, but he had some knowledge of it.

Mr. Bowles: I don't think this man can testify as to what was the system of the operation of the Legal Aid Department in '46 when he was not employed by that department.

Mr. Stallard: Well, he might have seen some of the books and have full knowledge from the books.

Mr. Maher: Well, then, let me say that I can't answer as to the contents of the letter or the meaning thereof, and inasmuch as Mr. Bowles stated that I could not answer the question, I will not attempt to answer it.

Mr. Stallard: Well, let me then ask you if you do know the arrangement in '46, and not make any reference to the letter, between Regional Counsel then, who are now Legal Counsel? What was the arrangement as far as contributions were concerned?

Mr. Maher: Well, my knowledge of it was that an arrangement was made between the Brotherhood and the Legal Counsel, which were then known as Regional Counsel, that they contribute a certain percentage of the fee that they charged the client and contribute it to the Brother-
[fol. 543] hood.

Mr. Stallard: In other words, it was a direct contribution on the percentage of the fee?

Mr. Maher: Yes, sir.

Mr. Stallard: The record shows that at one time the department required five percent. The lawyer got 20 percent and the department got five.

Mr. Maher: As near as I can remember the figures, I think that was the arrangement.

Mr. Stallard: But you don't know anything about the letter, then?

Mr. Maher: I can't recall the letter.

Mr. Stallard:—I don't think you would, because it was written in '46.

Mr. Bowles: Where were you in 1946, say, June the 15th, 1946? Just a rough—

Mr. Maher: Where I was?

Mr. Bowles: Yes.

Mr. Maher: God!

Mr. Bowles: That's the year before you came with—

Mr. Stallard: You mean what was he doing?

Mr. Bowles: What were you doing? I don't mean the exact place.

[fol. 544] Mr. Maher: Well, I was most likely a Brotherhood investigator out in the field.

Mr. Bowles: But you did not come into the office of the Legal Aid Department as an employee of that office or as its Chief Clerk until some time in 1947?

Mr. Maher: No, that is right.

Mr. Bowles: And you of your own knowledge have no information as to what letters President Whitney might have written in '46, or any other year really, do you, other than those letters which might have been directed directly to you personally?

Mr. Maher: Well, generally speaking, I have no knowledge of letters—

Mr. Bowles: All right.

Mr. Maher:—prior to my coming into the Grand Lodge.

Mr. Bowles: Right.

[fol. 545] NOTARY'S CERTIFICATE (omitted in printing).

[fol. 546]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 1
EXCERPT FROM CONSTITUTION

BROTHERHOOD OF RAILROAD TRAINMEN
Organized at Oneonta, N. Y., September 23, 1883

Brotherhood of Railroad Trainmen
Insurance Department

Amended at the Thirtieth Convention
Held at Miami Beach, Florida,
August 30th to October 8th, 1954, Inclusive.

IN EFFECT ON AND AFTER JANUARY 1, 1955

Amendments Appear in Italics

Rulings of the President, or citations thereto, appear
following the Sections or Rules to which they apply.

Printed in the United States on Union Made Paper

[Union Label]

[fol. 547] Legal Aid Department.

Under date of August 15, 1930, Special Circular No. W-32 was addressed to the secretaries of all lodges of the Brotherhood in the United States, requesting that each lodge designate at least one member whose duty it would be to submit to the Legal Aid Department preliminary reports on all cases of accidental injury or death to our members on railroad. At the same time blanks were forwarded to all lodges for use in making such reports, and

it was suggested that probably it would be advisable to select local chairmen for this purpose, but that where the president, secretary and treasurer, or some lay member of the lodge, was in better position to handle the reports, one of such officers or members should be selected.

Many of our lodges and members have cooperated splendidly in getting these reports to the Legal Aid Department, but in some instances the department has not been able to render any service to injured members, or to dependents of members killed in railroad service, because of failure to receive the necessary reports. The department cannot, of course, be of the assistance intended, unless it has the cooperation of all concerned.

Therefore, in accordance with Section 91 of the Constitution, which provides that the secretary shall conduct the correspondence of subordinate lodges, the secretaries of all lodges in the United States will accept this as official notice that it shall be their duty to report to the Legal Aid Department each case where a member of their respective lodges is accidentally injured or killed while engaged in railroad service.

[fol. 548] While a statement of some of the important facts in each case is desirable, a report of the name and address of the member concerned, the names and addresses of his dependents if the member was killed, the name of the railroad, the time and place of the accident, and whether injury or death occurred, is sufficient if promptly forwarded to the department. Promptness in making these reports is very essential and, therefore, they should not be delayed awaiting the development of facts other than as above stated.

As indicated, a supply of blank forms for use in submitting these reports has previously been forwarded to all lodges in the United States. If an additional supply of such forms is required by the secretary of any lodge, they will be furnished upon request.

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[fol. 549]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 1-B

EXCERPT FROM CONSTITUTION

BROTHERHOOD OF RAILROAD TRAINMEN
Organized at Oneonta, N. Y., September 23, 1883

Brotherhood of Railroad Trainmen
Insurance Department

Amended at the Thirty-First Convention
Held at Cleveland, Ohio,
January 4th to February 18th, 1960, Inclusive

IN EFFECT ON AND AFTER MAY 1, 1960

Amendments Appear in Italics

Rulings of the President, or citations thereto, appear following the Sections or Rules to which they apply.

Printed in the United States on Union Made Paper

[Union Label]

[fol. 550] Duties of Secretary.

Sec. 91. It shall be the duty of the secretary to keep a true and correct record of all the proceedings of the lodge, receive all communications, conduct the correspondence, and have charge of the seal and records of the lodge. He shall notify all officers of their election or appointment. *Subsequent to the action of any subordinate lodge which might affect, concern or be of interest to another lodge, such lodge must be notified by the secretary of the lodge taking such action.* He shall, upon the acceptance of charges by the lodge, against a member of the lodge of which he is secretary, at once mail a copy of such charges and a copy of the notice thereof to the accused member duly signed by himself as secretary, to the President of the Brotherhood. He shall mail to the President of the Brotherhood, signed by himself as secretary, a true and complete copy of the minutes of the proceedings of the lodge, receiving the charges, and of the appointment of the committee to hear such charges, and of the report of such committee, and of the action of the lodge on the report of such committee. He shall notify the General Secretary and Treasurer of all changes in the elective offices of the lodge, and time and place of meeting. He shall prepare, sign and seal all papers and cards requiring his official signature as further provided in this Constitution. The secretary of the lodge shall act as secretary of the board of finance, except where the offices of secretary and treasurer have been combined, when the president of the lodge will appoint a member to act as secretary of the board of finance. *It shall be the duty of the secretary to see that all notices required with respect to the election of officers and levying of assessments are handled in accordance with the Constitution.*

[fol. 551] *The secretary in conjunction with the president shall file all informational reports required of them by Section 301 (a) of the Labor-Management Reporting and Disclosure Act of 1959. (Not applicable in Canada.)*

Ruling on Section 91.

It is noted that secretaries of lodges do not always affix the seal of the lodge to papers and communications re-

flecting lodge action. A secretary will, of course, send out many letters upon which the seal of the lodge is not authorized or necessary, but the rule should be rigidly followed in cases of official communications to the Brotherhood and to subordinate lodges, assessment lists or other papers requiring certification.

The secretary is custodian of the seal and should keep it in his possession. He is required, however, to see to it that it is available for use at lodge meetings that he may not be able to attend. The secretary pro tem, has no right to use the seal of the lodge further than to impress it upon papers and documents authorized by the lodge at the meeting at which he acted as secretary.

Some secretaries and treasurers fail to have correspondence which they receive, and which refers to business of the lodge, read at a meeting of the lodge. In other cases, important mail addressed to officers of a lodge for the lodge is held by the officer and not read to the lodge for several weeks after its receipt, and in many instances no attention is paid to answering communications addressed to lodges. It should be understood that all correspondence addressed to an officer of a lodge relative to Brotherhood affairs is the property of the lodge, and not personal business, and should either be taken or sent to the lodge at the first meeting after its receipt for the information of all members concerned.

Upon the death of a member, the secretary of the lodge should immediately submit report to the General Secretary and Treasurer, giving the name of the member and the date of death, regardless of whether he was an insurance or non-insurance member.

It is necessary for the secretary of the board of finance to sign in all instances semi-annual statements and semi-annual reports forwarded to the President of the Brotherhood; and in lodges where a joint secretary-treasurer is maintained it becomes the duty of the appointed secretary of the board of finance to join with the treasurer in certifying to the correctness of such reports by attaching his signature thereto. Strict adherence to this requirement must be observed by the officers concerned, thereby avoiding the necessity of the President returning semi-annual statements and reports because of lack of proper signatures.

Department of Legal Counsel.

Under date of August 15, 1930, Special Circular No. W-32 was addressed to the secretaries of all lodges of the Brotherhood in the United States, requesting that each lodge designate at least one member whose duty it would be to submit to the Department of Legal Counsel preliminary reports on all cases of accidental injury or death to our members on railroads. At the same time blanks were forwarded to all lodges for use in making such reports, and it was suggested that probably it would be advisable to [fol. 552] select local chairmen for this purpose, but that where the president, secretary and treasurer, or some lay member of the lodge, was in better position to handle the reports, one of such officers or members should be selected.

Many of our lodges and members have cooperated splendidly in getting these reports to the Department of Legal Counsel, but in some instances the department has not been able to render any service to injured members, or to dependents of members killed in railroad service, because of failure to receive the necessary reports. The department cannot, of course, be of the assistance intended, unless it has the cooperation of all concerned.

Therefore, in accordance with Section 91 of the Constitution, which provides that the secretary shall conduct the correspondence of subordinate lodges, the secretaries of all lodges in the United States will accept this as official notice that it shall be their duty to report to the Department of Legal Counsel each case where a member of their respective lodges is accidentally injured or killed while engaged in railroad service.

While a statement of some of the important facts in each case is desirable, a report of the name and address of the member concerned, the names and addresses of his dependents if the member was killed, the name of the railroad, the time and place of the accident, and whether injury or death occurred, is sufficient if promptly forwarded to the department. Promptness in making these reports is very essential and, therefore, they should not be delayed awaiting the development of facts other than as above stated.

As indicated, a supply of blank forms for use in submitting these reports has previously been forwarded to all lodges in the United States. If an additional supply of such forms is required by the secretary of any lodge, they will be furnished upon request.

[fol. 553] Consideration of Grievances.

No. 5. Any member considering that he has been unjustly dealt with by his employer, or that he is otherwise aggrieved or is denied compensation for time lost and expenses incurred by sustaining minor personal injuries in line of service, shall make a comprehensive statement of the grievance in writing containing all of the material facts necessary for a clear understanding of the grievance and present or mail the same to the secretary of his lodge for handling at the next regular meeting. The lodge shall then determine by a majority vote of the members present, employees of the division, whether to sustain or reject the grievance. Should the grievance be sustained, the lodge will then authorize either the local chairman or the local [fol. 554] grievance committee to lay the matter before the trainmaster, superintendent, or other proper officer, and use every means to effect a satisfactory settlement, and report his or their action and all things pertaining to the case to the lodge. If the result is not satisfactory, it may be referred to the general grievance committee for further action. A member or a lodge may withdraw a grievance placed in the hands of a general grievance committee, provided such action is taken before said grievance has been presented by the general grievance committee to the officer of the company, but not thereafter.

All grievances must be handled by the regular local grievance committee, or by the local chairman if the lodge so directs, before being referred to the general grievance committee for adjustment. Grievances pertaining solely to members employed on a particular road or division or bus line shall be disposed of by a majority vote of the members of the lodge who are employed on such road or division or bus line; provided, that at least five such members must be present to take action upon such grievance. On

small systems where the office of general chairman is maintained, upon the request of all lodges on such systems, the President of the Brotherhood may issue dispensation permitting the general chairman to handle local grievances. Nothing in this rule shall be construed to prohibit a local lodge from submitting direct to state or national legislative boards matters involving violation of state or federal laws. Ruling on General Rule 5.

In presenting to a lodge a statement of his grievance, as a basis for lodge action a member should give all facts pertaining thereto, in order that the lodge may intelligently decide whether or not the grievance is of such merit that it should be taken up. A mere request from a member to have his grievance taken up, without giving any grounds which might justify the lodge in doing so, is not sufficient.

The jurisdiction of local grievance committees ends with division superintendents, or officer holding similar position; the interpretation being that a local grievance committee cannot present grievances to a general officer of the company; they should be presented by the general grievance committee.

[fol. 555] Local grievance committees are not authorized to make agreements with the company that conflict with the terms of the system agreement, or to handle any matter that is under the jurisdiction of a general grievance committee.

All grievances must be handled by the regular local grievance committee before being referred to the general grievance committee for adjustment. Special committees cannot be appointed by the lodge for the purpose of presenting grievances because it may be thought the members of the regular committee do not favor the matter in hand.

It has come to our notice that certain lodges are permitting members to present grievances by petition, and otherwise, direct to railway officials without having been formally approved by the lodge. The practice must be discontinued. It is the duty of the lodge to see to it that no grievance is presented until considered by the lodge and then only through the regularly elected local and general grievance committees for the system.

Where road conductors, road trainmen other than conductors, and yardmen employed on a particular railroad or division are all represented by one local grievance committee, it is ruled that in the disposition of a grievance matter affecting one and not another class, the members (quorum of five or more) employed under the jurisdiction of the local grievance committee in the particular class affected are authorized to vote and determine the disposition of the grievance, independently of the members employed in the other class or classes of service not affected. The members in the unaffected class or classes shall be permitted to speak but not to vote on the disposition of the matter.

A member working on a system under the jurisdiction of a lodge other than that in which he holds membership, has the right within a period of ninety days from the date of his employment to present a grievance to the lodge under whose jurisdiction he is at work. If he has been employed on the system under the jurisdiction of such lodge more than ninety days, and has not transferred his membership thereto, the lodge should not consider the grievance.

In order to conduct our affairs in full compliance with the law, it must be distinctly understood that representatives of this Brotherhood, including local and general committees, must refrain from handling or attempting to handle major personal injury cases or death claims for our members or their dependents, and local and general committeemen will also refrain from handling claims for minor personal injuries unless authorized to do so by a bonafide grievance in accordance with General Rule No. 5.

When major personal injury or death cases are called to the attention of local or general chairmen, it becomes their duty to carry out the policy of the Brotherhood by informing the parties of the Brotherhood's facilities for investigating cases of this character, so that they can avail themselves of these facilities of the Department of Legal Counsel, if they choose to do so.

All local and general chairmen shall in every instance report to the President of the Grand Lodge cases in which they have assisted members in making settlements with railroad companies for time lost in connection with minor accidental injuries that are handled in accordance with

General Rule No. 5 of the Constitution. The amount and terms of the settlement, as well as detailed report of the cause of the injury and nature and extent of the disability, shall be included in such reports.

(See ruling on Section 101.)

[fol. 556]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 2

EXCERPTS FROM REPORT TO A. F. WHITNEY
PRESIDENT, BROTHERHOOD OF RAILROAD TRAINMEN

WITH RECOMMENDATIONS FOR PROTECTION OF INJURED MEMBERS
AND DEPENDENTS OF THOSE KILLED IN RAILROAD SERVICE.

By TOM J. McGRATH
General Counsel,

Brotherhood of Railroad Trainmen.

[fol. 557] Mr. A. F. Whitney, President,
Brotherhood of Railroad Trainmen,
Cleveland, Ohio.

Re—Report and Recommendations for
Protection of Injured Members
and Dependents of Those Killed
in Railroad Service.

Dear Sir and Brother:

During the course of the last several months we have, from time to time, discussed the apparent trend of legislation in the direction of abolishing the practice of so-called ambulance chasing, with the thought in mind of ascertaining the probable effect of passage of such legislation on our members who may be injured in the course of their employment and the dependents of those who may be killed.

The question naturally arises why should we, as an Organization, be interested in whether ambulance chasers are permitted to continue their operations, or whether they be legislated out of business. The occupation in which our members are engaged is an extra hazardous one. During the course of a year hundreds of our members are killed and injured on the railroads of the U. S. In order to provide a fair and reasonable measure of compensation for the injured railroad men and the dependents of those who are killed the Federal Employer's Liability Law was enacted. The passage of this legislation was brought about by the united efforts of the railroad Brotherhoods against severe and determined opposition on the part of the railroad company employers. If the railroad men of the country are to reap any considerable measure of benefit from this law it is necessary that they be familiarized with their rights under it. As presently constituted, the only medium through which the injured railroad man or the dependents of those who are killed may be advised of their rights is through the so-called ambulance chaser. The railroad companies maintain corps of highly trained, able and very often unscrupulous claim agents, whose prime and only function is to settle personal injury and wrongful death claims at a minimum of cost to the railroad companies. The ambulance chasers have afforded, to a very large extent, a valuable measure of protection to these injured men and the dependents of those killed.

CAN THE BROTHERHOOD CONSISTENTLY INSIST ON THE RETENTION OF AMBULANCE CHASERS AS A CLASS?

If the so-called ambulance chasing was engaged in only by high class personal injury lawyers specializing in railroad cases, the demand for the legislation above referred to would probably not be so urgent, and the possibility of defeating such legislation would be more promising. Unfortunately, however, a class of lawyers have invaded the ambulance chasing field and have engaged in practices

that no one can, in my opinion, successfully justify. The increased use of the automobile and the resulting traffic hazard have multiplied a thousand fold the minor and major injuries. The right to recover damages for injuries is based upon the supposed negligence of the party causing the injury. A practice has grown up among a certain class of lawyers to solicit these damage claims whether the element of negligence is involved or not.

[fol. 558] Automobile owners and insurance companies have been beset with an avalanche of claims continuously pouring in where such claims are apparently not justified. This has led to a good deal of opposition to ambulance chasers. The handling of railroad claims has been a rather profitable line of employment. This has attracted a great many mediocre lawyers into that field. The reputable, scrupulous personal injury lawyer has, in most instances, solicited the railroad man's case with the thought in mind of being of helpful assistance to the injured man, in securing just and adequate compensation for his injury. On the other hand, the unscrupulous ambulance chaser has, by the use of high pressure salesmanship methods, inveigled many injured railroad men into the signing of contracts for employment with the sole thought in mind of making as much for himself out of each case as is possible, and with no thought to the detrimental result which his conduct may have on the injured man. As a result of the recognition of the principle of seniority on the railroads, valuable rights have been secured by most of our members.

Notwithstanding these rights men are often induced to permit lawyers to sue the railroad companies in cases where their injuries are such that they might better be cured and return to work thereby preserving their seniority. It is also a matter of common knowledge that a railroad man having once employed a lawyer to sue a railroad company forfeits any claim for reinstatement to the position previously held by him and is virtually black listed from employment on any other railroad. It will be seen from the foregoing that the Brotherhood is interested in the ambulance chasing business from two standpoints. First—the protection accorded our men by the comparatively high class ethical personal injury specialists, and second

from the injury done to our men by the unscrupulous ambulance chaser whose only thought is to make a fee without regard to the consequential injury that may be inflicted on a member whose injury does not permanently incapacitate him from railroad work. There is some question as to whether the benefits are offset by the evils of ambulance chasing or not. I think that until recently at least the merits of this system more than outweighed the demerits. With the invasion of unscrupulous ambulance chasers into the railroad field the benefits accruing to railroad men as a class are found to be lessened. At any rate it is a subject that requires most serious consideration on the part of the officers of the Brotherhood.

[fol. 559] POSSIBLE OBJECTIONS TO BE MET AND
OBSTACLES TO BE OVERCOME

If a LEGAL AID BUREAU is established along the lines indicated herein the question will naturally arise as to what character of claimants shall receive consideration by the bureau. Of the hundreds of injuries sustained yearly many are trivial and inconsequential in character. It would seem that the LEGAL AID BUREAU should not be flooded with inquiries relative to minor accidents. In all cases where the injury is such that the employe is likely to be able to return to work within 60 or even 90 days it would [fol. 560] seem there should be no occasion for calling upon the LEGAL AID BUREAU for assistance. This rule, however, would be subject to the modification that where an injured man lost one or more fingers or toes which would permit him to recover and return to work within 90 days that advice might well be given as to the settlements warranted in such cases.

There will, no doubt, from time to time be members who will prefer to take their cases to lawyers other than those selected by the Brotherhood and with whom contracts have been made. It seems to me that our members should be free to employ other counsel but unquestionably the tendency will be to rely upon the Brotherhood and to support the LEGAL AID BUREAU if worth while service is being

rendered to the men. Another matter of serious import involves the maintenance and sustenance of the injured men and their families during the periods of disability prior to the settlement of their cases. How serious this question may be remains to be seen. In the cases of total and permanent disability, their Brotherhood insurance will take care of them. In needful cases it may be that the necessary support can be given from the fund created for the maintenance of the LEGAL AID BUREAU, all moneys, of course, to be advanced in the nature of a loan to be deducted from the final recovery. Even though no assistance is given along the above lines nevertheless the benefits which will accrue to the injured members as a whole will much more than offset the hardships in the few isolated cases where the members are not able to maintain themselves during the incapacity. Local lodges may also be expected in such cases to render aid. For a time at least the Brotherhood may be subjected to some annoyance by the filing of claims for insurance, which claims would not otherwise be made except for the fact that the Legal Department had taken the position of insisting on a settlement with the employe on the theory that he had been permanently injured. This situation would arise only in benevolent claims and of course it should be distinctly understood that functions of the LEGAL AID BUREAU are entirely separate and distinct from those of the Beneficiary Board and that the attitude of the Legal Department should not be taken into consideration and would have no influence on the action of the Beneficiary Board. Under the law of the Brotherhood, as sustained by the courts of the country, the Beneficiary Board and the Board of Insurance are the sole judges and courts of last resort in passing on claims arising under Section 70 of the Constitution, and in the course of time members will become educated to understand that the mere fact that the LEGAL AID BUREAU had extended every effort to procure a substantial recovery could not be considered in passing upon claims for insurance.

THE PLAN

A LEGAL AID BUREAU should be established at the headquarters of the Brotherhood for the purpose of ad-

vising injured members, and the dependents of those who were killed, of their rights. Competent and experienced personal injury damage claim lawyers should be selected throughout the country to handle the claims that cannot be satisfactorily adjusted directly between the claimants and the railroad companies. The selection of these attorneys should be determined by taking into consideration several factors including density of membership, character of railroads including miles of track and area served, the attitude of courts and juries in the different states and accessibility of the lawyers from different parts of the territory for which they are selected. Contracts should be entered into with these lawyers designating them as the officially selected attorneys for the Brotherhood to handle cases in specified territories. These contracts should call for the handling of cases on a contingent fee basis, compensation to be adjusted on the basis of 15% of the net amount recovered in suits where trials are necessary and 10% in cases which are settled before trial.

Expense incurred in the preparation and trial of cases should be borne by attorneys where no recovery is made.

Further investigation or experience may develop that the better course to pursue is to arrange with several lawyers in a given territory instead of one. This would give the claimant a choice as between several high class lawyers but under this arrangement the scale of fees would naturally be higher. This is a matter of detail, however, that does not go to the merits of the plan as a whole.

Contracts should also call for supervision by the LEGAL AID BUREAU and a division of the fees paid the lawyer in all Brotherhood cases whether referred by the Legal Department or taken direct to the lawyers by members of the Organization. The Brotherhood should receive 2% of the net amount of all recoveries to be used for the maintenance of the LEGAL AID BUREAU. The local attorney should be required to report to the BUREAU sufficient detailed information with reference to each case handled so that statistical information can be gathered bearing on the amount procured in settlements and verdicts, the attitude of the different railroads, court costs and other expenses. All bills for expenses should be approved by the

Legal Department before deducted from the amounts recovered in settlement or verdict. This information could be used to determine whether certain lawyers were making settlements or procuring verdicts up to the average standard established for the country. It would also indicate the wisdom of changing from time to time the places where cases were to be tried. In this connection it should be borne in mind that under the Federal law a railroad can [fol. 561] be sued in any state in which it does business. The local lawyer should be required to gather such additional evidence as may be necessary to supplement that furnished by the BUREAU. The BUREAU should aid and assist the local lawyers as much as possible by advising of new decisions and settlements rendered or being made from time to time. Contracts with lawyers should be terminable at will by either party.—Advice should be given to the chairman of general grievance committees in cases where they are called upon and undertake to render assistance to the injured members or the dependents of those killed. Competent investigators should be employed to investigate cases where the intricacies involved necessitated first hand information which cannot be satisfactorily secured through correspondence.

Arrangements should be made with competent physicians and surgeons for the purpose of making examinations of claimants. It is frequently necessary in order to determine what would be a reasonable amount for settlement that accurate knowledge of the extent of the injury be obtained; such doctors should also be chosen with a view to using them as witnesses in cases which are eventually brought to trial. The expense incident to such examinations should be advanced out of the LEGAL AID BUREAU FUND, but treated as a lien against the ultimate recovery. This should also be true of expenditures made for investigation. The Brotherhood could probably insure reimbursement for such expenditures by procuring an order on the railroad company authorizing it to pay the amount involved, direct to the Organization. In cases where no recovery was had, the loss should be borne by the LEGAL AID BUREAU FUND.

MAINTENANCE OF LEGAL AID BUREAU

As shown previously in this report there were in 1928, 282 deaths in the Brotherhood resulting from railroad accidents and there were 228 cases of total and permanent disability for which insurance was paid. For these injuries and deaths an amount approximating \$4,758,000 was, or at least should have been, paid. We estimate that 80% of these cases would be liability cases and that at least 50% of the total number of cases would be successfully adjudicated by the attorneys for the Brotherhood, either by suit or settlement and that 2% of the total amount recovered in these cases would approximate \$47,580. This sum should be amply sufficient to maintain an adequately equipped and efficient LEGAL AID BUREAU.

EXPERIMENTATION

The foregoing is a tentative plan for adoption in the event that it is deemed wise to establish machinery to function throughout the entire United States. The plan is no doubt subject to a great deal of improvement, and constructive criticism with respect thereto is invited. The best plan that may be devised on paper will, no doubt, still be found subject to improvement after it is tried out in practice and for that reason I would suggest that the plan at first be limited to a comparatively small area for the purpose of ascertaining its value to members of the Brotherhood and at the same time to discover its weak points and remedy them before attempting to apply the plan to the country at large. I believe that at the outset our attention along the lines indicated above should be confined to the States of West Virginia and Ohio. West Virginia should be included for the reason that there appears to be a great need for such service in that State at the present time due to a very large extent, if not solely, to the passage of the so-called ambulance chasing bill. I think it is also a foregone conclusion that the Supreme Court of the State of Ohio will pass rules restricting ambulance chasing; ambulance chasing has to a very large extent in and about Cleveland, Ohio, become very detrimental to the

welfare of our members. The taking in of the State of Ohio will, because of the fact that the headquarters of the Brotherhood are located in Cleveland, enable the Grand Lodge to more satisfactorily supervise its workings and to test its practicability than if the experiment were made in a more distant state. Based upon the same method of calculations as applied to the country at large, it is estimated that a sum approximating \$4,500 per year in revenue for the maintenance of the LEGAL AID BUREAU will accrue from the handling of personal injury and death cases in the States of West Virginia and Ohio.

While this report has been somewhat verbose, I feel that the importance of the subject matter considered justifies my going into the subject very thoroughly. If it is found that a practical means can be adopted to eradicate the harmful influence of claim agents and ambulance chasers, and to place the adjudication of the rights of our injured men on a higher and a more business like plane, it will be, to my mind, the most progressive step taken by the Organization in many years.

In the preparation of this report I have been greatly assisted by Brother Don Hosmer, our Statistician, in the gathering and analyzing of statistical information.

Fraternally yours,

TOM J. McGRATH,
General Counsel.

Dated at Cleveland, Ohio, July 24, 1929.

[fol. 562]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 3

EXCERPTS FROM SPECIAL CIRCULAR NO. W-24

GRAND LODGE

BROTHERHOOD OF RAILROAD TRAINMEN

OFFICE OF THE PRESIDENT

Cleveland, Ohio, January 22, 1930.

To all Lodges and Members,
Brotherhood of Railroad Trainmen,
in the United States.

Sirs and Brothers:—

SHALL A LEGAL AID DEPARTMENT BE
ESTABLISHED IN THE GRAND LODGE FOR
THE PURPOSE OF ADVISING INJURED
MEMBERS, AND THE DEPENDENTS OF
THOSE KILLED, AS HEREINAFTER PRO-
VIDED?

[fol. 563] At the conference of the state legislative rep-
resentatives of the Brotherhood held in Washington, May
6 to 10, inclusive, 1929, the following resolution was
adopted:

"Whereas, Our organization does not maintain a
national legal aid bureau with regional organization or
contact for the purpose of advising our members as to
their legal rights in event of injury occurring in rail-
road service or the dependents in case of death, and

"Whereas, Reputable personal injury attorneys have raised the settlement fees for injury and death of our members by reason of their specialization in this field, and have secured settlements of the great majority of [fol. 564] such cases out of court for the reason that the railroad companies are aware that the injured members or their dependents have been properly and honestly informed of their rights; therefore, be it

"Resolved, That this national legislative conference request our President, Brother A. F. Whitney, to establish a legal aid bureau in our Grand Lodge office with regional organization or contact with reputable personal injury attorneys for the benefit of our injured members or their dependents."

At the first annual meeting of the International Association of General Chairmen of the Brotherhood of Railroad Trainmen held in Montreal, Quebec, October 1 to 5, inclusive, 1929, the following motion was adopted:

"That it be the sense of this Association that we endorse the principle of the legal aid bureau and recommend that the President of the Grand Lodge submit the question with his recommendation to a referendum vote of the lodges, or to the next convention of the Brotherhood, and in the meantime this Association recommends that the Brotherhood assist our members in the handling of personal injury cases by furnishing advice through our legal department."

In conformity with the spirit of these actions, the undersigned is herewith submitting for the consideration of all lodges the question of the establishment of a Legal Aid Bureau to function along the lines hereinafter set forth. It is to be understood that the plan outlined is more or less tentative in character, and is subject to certain modifications and refinements as further investigation and experience may dictate.

THE PLAN

(Approved by the Board of Directors, January 16, 1930)

The plan under consideration contemplates the establishment at Grand Lodge headquarters of a bureau to which injured members and the dependents of those who may be killed while engaged in railroad service may apply for information and advice relative to their rights respecting claims for damages, this bureau to be conducted under the supervision of the President of the Grand Lodge.

When a member is injured he will be privileged to write to the bureau furnishing such information relative to his injury as may be necessary to enable the bureau to determine his rights. The same privilege will be accorded to dependents of members who may be killed in service. This privilege will also be extended to the proper Brotherhood officers for the purpose of enabling them to assist in adjusting claims for damages in behalf of injured Brotherhood men and the dependents of those who are killed. A certain limitation, of course, will have to be placed on the character of inquiries which may be submitted to the bureau so as to avoid burdening it too heavily with work incident to the giving of advice in connection with minor injuries where employees are able to return to service. The bureau itself will not undertake to negotiate settlements directly with the railroad companies.

Arrangements will be made through the medium of the bureau with competent and reputable railroad damage suit lawyers at various strategic points in the United States to whom members may resort for advice and assistance in cases where they cannot satisfactorily adjust their claims direct with the railroads. No charge will be made for advice given by these regional lawyers except where the members, on their own volition, contract with the lawyers to prosecute their claims.

There will be no obligation on the part of the members of the Brotherhood to consult or employ lawyers agreeable to the Legal Aid Bureau for the above purpose.

Arrangements will be made with lawyers in the various localities governing the amount to be charged for their services, which will not exceed twenty per cent of the net

amount of any recovery which may be made by the lawyers in behalf of the injured man, or the dependents of one who has been killed.

Lawyers will advance all necessary expense to properly investigate, prepare and try cases where it is necessary to resort to court action. Claimants will not be required to assume any expense or to pay for service except in cases where, through the efforts of the attorneys employed by them, a recovery of damages is made.

The injured member, or the dependent, will at all times retain control of his case in the hands of the attorneys so that no settlements may be made without his approval. The right accorded to injured members and dependents to seek advice from regional lawyers without becoming obligated financially or otherwise will be extended to proper Brotherhood officers representing claimants.

The Brotherhood will not assume any responsibility for the care and maintenance of injured members during the pendency of the adjudication of their claims. This, of course, will not interfere with the usual assistance which [fol. 365] is given in needy cases by subordinate lodges, nor will it prevent members from entering into any agreements for maintenance which they may see fit to enter into with lawyers whom they have employed to handle their cases.

It must be understood that the Legal Aid Bureau will be entirely separate from the beneficiary and pension departments of the Brotherhood, and that no efforts which may be put forth by the bureau or any regional counsel to secure adequate compensation for injured men will be construed as having any relationship to the allowance or disallowance of insurance or pension claims. Regional counsel will be required to report all settlements and verdicts to the Legal Aid Bureau, together with a statement of facts showing the cause of the injury and the extent of the disability; this for the purpose of determining whether maximum results are being obtained by certain lawyers in certain districts as compared with those in other districts.

The Legal Aid Bureau will periodically disseminate information to the several regional counsel, gathered from the reports as sent in to the bureau, as well as from other sources.

The above is intended to give a general outline of the plan under consideration, and it is my desire that this circular be read at as many meetings of your lodge within the time limitation prescribed as possible and that the hereto attached ballot be returned to this office on or before March 16, 1930, with indication as to whether your lodge is "FOR" or "AGAINST" the establishment of a bureau for the purposes and along the lines suggested.

A majority of the members present at the meeting designated by the lodge for final action shall determine the vote of the lodge, and it will take two-thirds vote of the lodges in the United States to carry and make this proposition effective.

Fraternally yours,

/s/ A. F. WHITNEY
President.

BROTHERHOOD OF RAILROAD TRAINMEN

(President's Special Circular No. W-24)

Lodge No.

1930.

Mr. A. F. Whitney,
President, B. of R. T.,
Cleveland, Ohio.

Dear Sir and Brother:—

At a meeting of the above lodge held
1930, President's Special Circular No. W-24, pertaining to the establishment of a Legal Aid Bureau for the purpose of advising injured members and the dependents of those killed in railroad service was read, and I am instructed to notify you that the vote of said lodge was "....." the creation of such bureau.

(FOR or AGAINST)

Fraternally yours,

.....Secretary.

(SEAL)

[fol. 566]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 4

EXCERPTS FROM SPECIAL CIRCULAR No. W28

GRAND LODGE
BROTHERHOOD OF RAILROAD TRAINMEN

Office of the President

Cleveland, Ohio, April 15, 1930

LEGAL AID BUREAU

To all Lodges and Members,
Brotherhood of Railroad Trainmen,
in the United States.

Sirs and Brothers:

[fol. 567]

Number of lodges entitled to vote.....	881
Number of lodges returning ballot.....	645
Ballots necessary to carry proposal.....	588

57

Number of lodges in United States not voting 228
Lodges from which ballots were received after ballot has
been closed

"FOR"

86-275-298-311-338-427-788-85

"AGAINST" None.

The establishment of the bureau, as well as the making of agreements with regional attorneys throughout the United States, will be consummated as soon as consistently possible, and notice of its establishment will be printed in the "Railroad Trainman" for the information and guidance of all members.

Briefly, the plan contemplates the establishment at Grand Lodge headquarters of a bureau, with the necessary legal and clerical assistance, to advise injured members, and the dependents of those who may be killed, as to their rights respecting claims for damage. This assistance will not only be given to injured members, and the dependents of those killed, but also to proper subordinate lodge officers and committeemen, for the purpose of assisting injured members, or dependents, in negotiating settlements. No fee or charge will be made to the members for this advice.

In order to secure advice it will be necessary to furnish the bureau with a full statement of facts surrounding the injury or death, so that questions of liability may be determined. In injury cases not involving the loss of limbs or other specific injuries, it will be necessary to furnish medical statements clearly describing the character and extent of the injury. In cases where investigations must necessarily be made before passing upon the question of liability, which instances are more likely to occur with reference to death cases, the Legal Aid Bureau will undertake to make the necessary investigations, calling to its assistance officers of subordinate lodges and committeemen. It is hoped a full measure of cooperation will be given by these members.

Because of the great volume of minor injuries occurring to members of the Brotherhood employed on railroads of the country, it will be impossible to give assistance or advice in cases of minor injuries where employees are able to return to work in a comparatively short time. It is felt that, at the outset at least, the bureau should not be requested to give information to employees who can return to work within ninety days. This attitude is taken not only because of the extremely increased burden of work which would be thrust upon the Legal Aid Bureau incident to answering inquiries relative to minor injuries, but by the further fact that it is invariably to the best interest of a railroad employee, receiving a minor injury, to return to work, thereby preserving seniority rights with his employer.

In the minor injury cases railroads usually pay for time lost and it is felt it is better in all cases to accept such set-

tlements than to employ lawyers. It is equally true that as time goes on, the committeemen will be familiarized with the rights of members under the law and will probably be able to assist injured members in negotiating adjustments of minor claims with reasonably satisfactory results.

[fol. 568] In all cases where the disability is not permanent and the member is able to return to his employment, it is the belief of the undersigned that every effort should be made to bring about amicable settlements with the railroad company. It is almost the uniform practice of the railroads of the United States to discharge an employee for employing a lawyer. It is also the practice of most railroads to refuse employment to applicants who have previously brought suit against another railroad. Age restrictions subscribed to and followed by most railroads militate against men, who have passed the prescribed age limit, who are seeking employment. We believe that by following a policy of attempting to reach fair settlements with the railroad employers of the country, taking the minor injury cases out of the hands of lawyers, we will be able to improve conditions with respect to the settlement of injury cases as they now exist.

In cases where employees are permanently injured so that they cannot return to their former occupation, it is expected that every fair and reasonable effort will be made to adjust claims for damages direct with the railroads, either by the injured member himself or through the medium of his chosen representative among the officers and members of the Brotherhood.

In cases where fair settlements cannot be obtained in this manner and where it appears necessary to litigate such claims, the Brotherhood will select attorneys located at strategic points in the United States, to whom injured members, and dependents of those killed, may resort for advice and assistance.

Our agreements with these attorneys will require them to advise members without charge with a view to enabling them, or their representatives among the officers and members of the Brotherhood, to negotiate settlements direct with the railroad company. In all cases where it becomes necessary to commence suit, these regional lawyers will

prosecute the cases of these members, and dependents, for a contingent fee of twenty percent of the net amount recovered in settlement of trial.

Contracts will be entered into directly between these lawyers and the claimants on forms approved by the Legal Aid Bureau. Regional attorneys will be required to advance all necessary court costs, expert witness fees, expense of medical examinations, etc. These expenses will be deducted from the amount of the recovery before a division is made of the net amount recovered. All expenses incurred in handling of claims by regional attorneys will be subject to approval by the Legal Aid Bureau. A small portion of the attorney's fee, not yet definitely determined upon, will be turned over to the Grand Lodge for the purpose of maintaining the Legal Aid Bureau. There will be no obligation upon the part of members to consult or employ regional counsel, but we believe it will be to their best interest to do so in cases where such consultation seems advisable for the reason that the Brotherhood will contract only with high class, capable and experienced railroad damage suit lawyers, and the charges in such cases will be from thirteen to thirty percent less than is now charged for similar service.

The injured member, or dependent, will at all times retain control of his case in the hands of the regional attorney, so that no settlement may be made without his approval.

The Brotherhood will not assume any responsibility for the care and maintenance of injured members during the pendency of the adjudication of their claims. This, of course, will not interfere with the usual assistance which is given in needy cases by subordinate lodges, nor prevent members from entering into any agreements for financial assistance which they may see fit to enter into with lawyers they have employed to handle their claims.

It must be understood that the Legal Aid Bureau will be entirely separate from the beneficiary and pension departments of the Brotherhood, and that no efforts which may be put forth by the bureau or any regional counsel to secure adequate compensation for injured men will be construed as having any relationship to the allowance or disallowance of insurance or pension claims. Regional attorneys will be

required to report all settlements and verdicts to the Legal Aid Bureau, together with a statement of facts showing cause of the injury and extent of the disability; this for the purpose of determining whether maximum results are being [fol. 569] obtained by certain regional lawyers in certain regions as compared with those in other regions.

The Legal Aid Bureau will periodically disseminate information to the several regional counsel, as well as to the lodges and members, bearing upon the rights of injured railroad men and the work of the bureau.

Fraternally yours,

/s/ A. F. WHITNEY
President

[fol. 570]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 5

RULES AND REGULATIONS GOVERNING RELATIONS OF
REGIONAL COUNSEL AND THE BROTHERHOOD OF RAILROAD
LEGAL AID DEPARTMENT

Regional lawyers will be selected in various railroad centers of the United States with a view to rendering the service contemplated by the establishment of the Legal Aid Department with the greatest degree of efficiency, keeping in mind the convenience of members and total membership in a given district so as to give the regional lawyers a reasonable assurance of a sufficient volume of Brotherhood business to warrant the rendering of proper service on the basis of compensation agreed upon.

When the regional lawyers are selected, and from time to time thereafter, articles will be published in the Trainmen's journal informing members of the services rendered by the Legal Aid Department and advising them also of the names and addresses of the regional lawyers.

When members are injured, either they or proper officers of their grievance committees or subordinate lodges, acting on their behalf, or in cases of the accidental death of members, their dependents, may write or call on the Legal Aid Department personally for information and advice as to their legal rights. They will be required to furnish as nearly as possible, a full and complete statement of all the facts surrounding the accidental death or injury. This will include written statements of witnesses, whenever and wherever obtained. Injured members, where there is any question as to the nature and extent of the disability, will be required to furnish statements from medical examiners.

In all major injury or death cases, upon request of the injured man or dependent, or an officer of the Brotherhood authorized to represent the claimant, an investigator employed by the Legal Aid Department will be assigned to investigate and ascertain the facts surrounding the accident or death. Reports of such investigation will be filed with the Department and when any such cases are referred to or brought to the regional counsel, copies of such reports will be sent to them. The Legal Aid Department will endeavor to provide means for securing promptly, after the occurrence of all accidental injuries or deaths, the name and address of the injured member or dependents, as well as the character of the injury, so that the claimants may be expeditiously informed that the services of the Department and of regional counsel are at his or her disposal.

Members and their dependents, upon request therefor, will be advised as to the best course to pursue, in the judgment of the Legal Aid Department, to effect a settlement, [fol. 571] including advice as to what amount in the judgment of the Department, would constitute a fair settlement of the claim. The affairs of the Legal Aid Department will be conducted with the thought in mind primarily of encouraging amicable settlement, particularly in cases where total and permanent injury has not been sustained.

Requests for information and advice in minor injury cases will be discouraged in order to prevent the burden imposed on the Legal Aid Department from becoming unduly heavy and thereby unreasonably expensive.

In cases where close questions of liability are involved and intricate detailed information is essential to a proper determination of a member's rights, he may be referred to the regional attorney of his district. It will be the duty of this attorney to counsel with and advise the injured member with a view to enabling him or his Brotherhood representative to effect a fair settlement. The Legal Aid Department will insist that regional lawyers in such cases advise members solely with a view to promoting the best interests of the member. Any over-reaching on the part of regional lawyers intended to induce members to sign contracts of employment will be discountenanced. In brief, the Legal Aid Department will expect the regional lawyers to advise members of the Brotherhood in exactly the same way as they would advise a client who came in to them and paid for legal advice.

The Legal Aid Department will endeavor, through the medium of the Trainmen's journal and circulars periodically sent to officers and lodges, to keep the membership advised as to the names and addresses of regional counsel in their respective districts. It is anticipated that members and dependents, or lodge officers representing them, may go direct to regional counsel in their respective districts for information and advice, and all such cases will be handled by regional counsel in the same manner as if referred to them by the Legal Aid Department. In any such cases where major injuries are involved, a Legal Aid Department investigator will, at the request of the regional counsel, be assigned to investigate such cases, making a report in duplicate, one copy to the regional counsel and one copy to the Legal Aid Department.

In cases where members have exhausted their efforts in attempts to procure settlement, they will be referred to regional attorneys, with whom contracts may be made for the prosecution of their claims. It must be understood that [fol. 572] the Brotherhood cannot undertake to control the actions of members in this regard, and that they will remain free to employ attorneys of their own choice.

Regional attorneys will be required to report all cases handled by them in which a contract has been entered into with members of the Brotherhood, setting forth a state-

ment of the facts involved, together with the amount of settlement or verdict received.

Regional counsel will be privileged to advise with the Legal Aid Department on questions of law, and it will be the policy of the department to disseminate information gathered from the several regional districts among all the regional counsel of the Brotherhood from time to time.

It will be understood that members will have control of their cases in the hands of regional counsel, and that no settlement of any case can be made without the consent of the client.

While the membership will be advised as to the names and addresses of regional counsel for their particular line of railroad, it will be impossible to control their choice of attorneys, and each member or dependent will have the option, either for reasons of choice or convenience, to consult with or employ any regional counsel. All cases involving injuries or death to members of the Brotherhood, either brought or referred to regional counsel, shall be considered as Brotherhood cases. The same rule shall apply in either personal injury or death cases which may be referred to counsel by the Legal Aid Department or its investigators.

APPROVED: _____

764

[fol. 573]

Form LA-1

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 6

BROTHERHOOD OF RAILROAD TRAINMEN
LEGAL AID DEPARTMENT

REPORT OF INJURY OR DEATH SUSTAINED WHILE ON
DUTY ON A RAILROAD

C. R. MAHER, Chief Clerk,
Legal Aid Department,
Brotherhood of Railroad Trainmen,
Standard Building,
Cleveland 13, Ohio

Date _____, 195__

Dear Sir and Brother:

I hereby notify you of the _____ of
(Injury or accidental death)

Brother _____ Age _____ Lodge No. _____
(Print Name)

Social Security No. _____

Address _____ Phone No. _____
(Street) (City) (State)

Date occurred _____ Time _____ M. Place _____

Occupation _____
(If Road Service, Show Thru or Local)

Employed on _____ Daily rate _____
(Railroad)

Name of hospital _____ City _____

Nature and extent of injury: _____

Cause of injury or death

(Describe just how accident happened and in what way company
is to blame for accident)

Wife's Name

Address, if not same:

Number of
Dependents Ages and Relationship:

Names and addresses of witness,
also crew members:

Fraternally yours,

(Sig.)

Secretary Lodge No.

To be used for reporting cases of injury or accidental death.
Mail IMMEDIATELY upon receipt of information of such in-
jury or accidental death, even though all facts as to cause
of accident are not yet available. Send additional informa-
tion by letter as soon as obtained.

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 7

BROTHERHOOD OF RAILROAD TRAINMEN

LEGAL AID DEPARTMENT

This report of accident must be filled out carefully, accurately and plainly, as the information contained herein will be used by our Legal Counsel as a basis for his opinion as to your rights under the law. If more space is required to answer any question, a separate sheet of paper may be used and attached hereto.

City Date 19....

1. Name Member Lodge No.

(Print)

Social Security No.

2. Address Phone No.

(Street) (City) (State)

3. Married or single Age Does wife work

4. How many dependent children and ages

5. Railroad employed by Job when hurt

6. Number of years employed

How many months worked out of last year

7. Date of accident, 19... Hour

Weather

8. Where did it happen?

Were you on duty?

9. Were you immediately disabled?

If not, when?

10. Taken home or to a hospital?

Name of hospital

11. How long disabled?

12. What injury or injuries did you sustain?

13. Give the names of the doctors
who treated you—Company

Personal

14. Are you now under medical care?

Doctor's name

15. Describe how accident occurred and in what way
you think company was at fault (Describe fully)

[fol. 575]

16. Give names and addresses of witnesses to the accident

.....

17. Name and addresses of crew with whom you were working when injured

Name	Occupation	Address
.....
.....
.....
.....

18. Were you engaged in Interstate Commerce

19. Were you engaged in through freight, local freight, work train, yard or passenger service at time accident occurred? service.

Daily rate of pay \$.....

20. Do still suffer pain?
 Describe it

.....

21. Have X-rays been taken?

When were they taken?

By whom were they taken?

Where taken?

22. What do they show?

.....

23. Have you worked since accident, if so, what kind of work have you done?

24. Approximate monthly earnings \$.....

Total past year \$.....

25. How much A. & H. Insurance do you carry?

26. Has the claim agent interviewed you?

27. Have you given a statement to the company?

Who took it?

28. When was it taken?, 19....

Where?

29. Do you have a copy of it?

If so, please attach same

30. Have you signed any release to the company?

Amount of settlement \$.....

31. Have you signed any contract with a lawyer?

If so, with whom?

32. What has been offered to you in settlement?

33. Do you believe you can eventually return to work?

About when?

34. Would you prefer to return to your job if possible?

35. Remarks:

(Signed)

770

[fol. 576]

Form F-LA-2D

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 8.

This report of death must be filled out carefully, accurately and plainly, as the information contained herein will be used by our Regional Counsel as a basis for his opinion as to your rights under the law. If more space is required to answer any question, a separate sheet of paper may be used and attached hereto.

City Date 19...

1. Full name of deceased
Member Lodge No.
2. Address Phone No.
(Street) (City) (State)
3. Age at time of accident
Date of next birthday 19...
4. By whom employed?
Occupation
5. Number of years employed
Has employment been steady?
6. Approximate monthly earnings \$
Total past year \$
7. Date of accident 19...
Hour Weather
8. Where did it occur?
Was deceased on duty?
9. Where was deceased taken
following accident?
10. When did deceased die? Date 19...

Hour Place of death

Cause of death

11. What injuries did deceased sustain?

12. Names of doctors
who treated deceased

13. Company or family doctors?

14. How long was deceased
conscious following his injury?

15. Did deceased tell anyone
how his accident happened?

If so, give their names and addresses.

16. Describe how accident occurred and who was to blame

[fol. 577]

17. Give names and addresses of witnesses to the accident

Occupation

Address

19. Interstate Commerce: Was there any freight in the cars that the crew was handling at the time of the accident that came into the State from a point outside of the State or that was going through the State, or that was billed to a point outside of the State? If not, what general work was performed by the crew before and after the accident? _____

20. Was deceased engaged in through freight, local freight, work train, yard or passenger service at time accident occurred? _____ service.

Rate of pay \$.

21. Did deceased give any statement concerning his accident to the company before death?

If so, who took it?

When was it taken?

Where was it taken?

Do you have a copy of it? If so, attach same.

22. Did deceased sign any release to the company?

23. Has any contract been signed with a lawyer?

Who signed it?

24. Full name and age of widow Age

25. If deceased had other dependents, give following information:

Name	Age	Address	Relationship to Deceased
------	-----	---------	--------------------------

.....
.....
.....

26. Has an Executor or Administrator been appointed?

27. If so, give full name and title

28. Did the claim agent interview the widow or dependents?

29. What has been offered in settlement?

30. Had deceased been injured before?
When?

31. What injuries did deceased receive at that time?

32. What settlement did deceased make for these injuries?

33. Name and address of funeral director?

34. Amount of funeral expenses \$
Has bill been paid?

35. Was deceased in good health at time of his accident?

36. Remarks: (Did deceased make any statement before death?)

.....
.....

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 9

BROTHERHOOD OF RAILROAD TRAINMEN

City State Date

Special accident report, covering injury or death of trainmen due to sudden start, stop, jerk, lurch, or slack action of trains, which will be treated as confidential when requested.

A. Name of Railroad I. Fireman

B. Division J. Head Brakeman

C. Place K. Swing Brakeman

D. Date L. ~~Flagman~~

E. Train No. M. Cars in train

F. Engine No. or Nos. N. Loads

G. Conductor Empties

H. Engineer O. Time of Accident

P. Cause of Accident

Q. Approximate cost of damage to equipment

R. Approximate cost of damage to track

S. Delay to train or trains

T. Name or names of persons killed

U. Name or names of persons injured

V. Describe injury

.....

.....

W. Details of accident and other information believed to
be important

.....

.....

.....

.....

.....

.....

.....

Treat confidential—
(Yes) (No)

Local Chairman

(or)

Legislative Representative

Lodge No.

Checked and approved by:

..... R. R.

General Chairman.

Note: Reports should be mailed to general chairman of
line on which accident occurred. The general chairman
will check report for discrepancies, and then forward to
Legal Aid Department, 1246 Standard Building, Cleve-
land 13, Ohio.

[fol. 579]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 10

Special Circular No. W-32.

GRAND LODGE

BROTHERHOOD OF RAILROAD TRAINMEN

LEGAL AID BUREAU

Cleveland, Ohio, August 15, 1930.

To Secretaries,
All Lodges, B. of R. T.,
In the United States.

Dear Sirs and Brothers:

In order to enable the Legal Aid Bureau of the Brotherhood to be of the greatest possible assistance to our members who may be accidentally injured on railroads, and to dependents of members accidentally killed in railroad service, we have prepared a blank form to facilitate the filing of preliminary reports in such cases with the bureau. A supply of such reports is being sent herewith, and additional copies may be had upon request to the Legal Aid Bureau, B. of R. T., 820 West Superior Avenue, Cleveland, Ohio. Reports should be submitted only in cases of serious injury, or death.

Promptness in reporting the facts surrounding any case is a very important factor, and with a view to insuring as far as possible that reports will be forwarded to the bureau without delay, it is requested that each lodge designate at least one member whose duty it shall be to submit reports of this character to the bureau.

Generally, local chairmen are in close contact with members employed under their jurisdiction and for that reason

it would seem advisable to select them for this purpose. However, where the president, secretary or treasurer, or some lay member of the lodge, is in better position to handle these reports, one of such officers or members should be selected. Where a lodge has jurisdiction over more than one division or line of railroad, someone should be selected for each line or division. The name and address of the member or members selected, and a statement of the territory over which he or they have jurisdiction, should be promptly reported to the Legal Aid Bureau.

The prompt forwarding of these reports to the bureau, which should include all the facts in each case, will greatly assist the bureau in serving the member directly concerned or his dependents, if called upon to do so, and we therefore trust we may have your full co-operation.

Fraternally yours.

TOM J. McGRATH, General Counsel.

Approved:

A. F. WHITNEY, President.

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 11

BROTHERHOOD OF RAILROAD TRAINMEN

INVESTIGATOR'S COMMISSION

Reposing special confidence in the integrity and ability
of Brother

of lodge, I hereby commission him to be an
investigator for the Brotherhood of Railroad Trainmen,
reporting to me the results of any investigation conducted
by him for the Brotherhood.

[Label]

*Given under my hand and seal of the Grand
Lodge, and to continue in effect during the
year indicated on the face of this card, or
until earlier revoked by proper authority.*

[Emblem]

.....
President

Signature of investigator
.....

[fol. 581]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBITS 12 & 12A

EXCERPTS FROM PRESIDENT'S ANNUAL REPORT OF 1930

LEGAL AID BUREAU—ESTABLISHMENT OF

[fol. 582] In his report Brother McGrath recommended the establishment of a bureau for the purpose of aiding and assisting our injured members in securing just compensation for their injuries.

Due to the fact that any plan that might be outlined would be more or less experimental in character, and because of the fact that the greatest need for such service appeared to emanate from the state of West Virginia, it was recommended that the Grand Lodge Legal Department undertake to advise our members in West Virginia and Ohio, and to arrange for the prosecution of their claims, where satisfactory adjustments could not be made direct with the railroads, by competent and experienced damage suit lawyers on a fee basis substantially below that ordinarily charged for such services.

As the question of establishing such a bureau appeared to be one of considerable importance, I listed it among other subjects for discussion at the meeting of the International Association of General Chairmen which was held at Montreal, Quebec, October 1 to 5, 1929. At this meeting various subjects were listed for discussion, among others the question of the advisability of creating a legal aid bureau at Grand Lodge headquarters for the purpose of advising and assisting injured members, and the dependents of those who might be killed while engaged in railroad service. After the subject had been discussed from all viewpoints the following resolution was presented and adopted by an overwhelming vote:

"Moved by Stokes and McCook that it be the sense of this association that we indorse the principle of the

legal aid bureau and recommend that the President of the Grand Lodge submit the question with his recommendation to a referendum vote of the lodges, or to the next convention of the Brotherhood, and in the meantime this association recommends that the Brotherhood assist our members in the handling of personal injury cases by furnishing advice through our legal department."

In order to ascertain the sentiment of the lodges in the United States in accordance with the recommendation embodied in the foregoing resolution, a referendum was submitted to such lodges in which the question submitted was:

"Shall a legal aid department be established in the Grand Lodge for the purpose of advising injured members, and the dependents of those killed as hereinafter provided?"

The referendum was submitted to the lodges under date of January 22, 1930, with an explanation of the purpose of the bureau. It was also stated in the circular accompanying the referendum ballot that it would be necessary that not less than two-thirds of all of the lodges in United States vote for the establishment of the bureau before it would be instituted. At that time there were 881 lodges in the United States. Five hundred and ninety-nine voted in favor of the establishment of the bureau; 54 lodges voted against it; 228 did not vote at all. The number of votes necessary to adopt the plan was 588. It will be noted that not only did the proposal receive more than the necessary two-thirds vote but that of those lodges voting the ratio in favor of establishing the bureau was better than eleven to one.

[fol. 583] After the receipt of approval of the lodges, as hereinbefore set forth, the General Counsel of the Brotherhood, by direction of the President, set about to organize the bureau.

The Brotherhood, in order to afford the relief desired, entered into agreements with attorneys who agreed to

handle and prosecute claims for members of the Brotherhood on a contingent fee basis, returning to the Brotherhood a certain proportion of their fees for the maintenance of the bureau.

As there appeared to be no particular need for such a bureau in Canada, the plan has, up to the present time, been confined to the United States.

Due to the fact that approximately 85% of the claims are governed by the provisions of the Federal Employers' Liability Act, under which law it is possible to sue a railroad for damages in any county or federal court district in any state in which a railroad operates, it was possible to confine the selection of regional counsel to a comparatively few lawyers and law firms. The fact that the law permits suits to be brought at any point where service can be had on the railroad is one of the most important factors in enabling the organization to organize the bureau on the plan which has been adopted.

As will be pointed out hereinafter, the duties of regional counsel of the Brotherhood are such that they are justified in expecting that the number of such counsel will be so limited that each one may reasonably expect to secure a sufficient number of retainers to reasonably compensate them for the services rendered to the Brotherhood.

[fol. 584] Agreements have been entered into with fifteen lawyers or law firms located in the following cities:

New York, N. Y.
 Boston, Mass.
 Minneapolis, Minn.
 Syracuse, N. Y.
 Cleveland, Ohio
 Chicago, Ill.
 Portland, Ore.
 Kansas City, Mo.
 St. Louis, Mo.
 Houston, Tex.
 Baltimore, Md.
 Birmingham, Ala.
 Atlanta, Ga.
 San Francisco, Calif.
 Denver, Colo.

We believe that these lawyers, located as they are at strategic points in the United States, will serve to take care of the needs of claimants for some time, at least, and until experience of the Legal Aid Bureau dictates the necessity or wisdom of adding additional regional counsel or changing the points at which such counsel are located.

THE PLAN

Succinctly, the plan upon which the Legal Aid Bureau is based, and the manner in which it functions, is as follows:

Each subordinate lodge of the Brotherhood in the United States has been asked to appoint one or more members whose duty it shall be, upon the occurrence of a major injury to one of our members while engaged in railroad service, to report on blanks provided for that purpose, the happening of the event. Upon receipt of such report the Legal Aid Bureau immediately communicates with the claimant, rendering the service of the bureau. The claimant is advised that if he will furnish the bureau with a detailed statement of the facts surrounding the injury or death, as the case may be, the bureau will endeavor to give him such information and advice as will assist him in negotiating a satisfactory settlement with his employer.

The claimants are also advised that, in cases where it is apparent that a first hand investigation should be made to develop the facts surrounding an accident in order to determine the question of liability, a trained investigator in the employ of the bureau is at his disposal for that purpose. Where a request is made for such an investigation, either by the claimant, or, in the event of his incapacity, by a responsible officer of his lodge, an investigator is, as expeditiously as possible, assigned to gather all of the facts and information which may be of value in determining the rights of the claimant. For this purpose the Brotherhood has already engaged the services of five experienced investigators who are working upon a full time basis. In addition to that, arrangements have been made with four additional investigators who work on a part time basis investigating such cases as may be assigned to them for that purpose. As the needs of the bureau increase

additional investigators to adequately perform the services required of them will be engaged.

When an investigation has been completed a full and detailed report covering all phases of the accident is made to the Legal Aid Bureau, after which the claimant is given such further and additional advice by the bureau as may be proper under the circumstances. Whenever it becomes [fol. 585] necessary for a claimant to engage regional counsel the reports of the investigator are turned over to regional counsel for his use.

In addition to securing information through the medium of correspondence, claimants are privileged to, and many of them do, come to the headquarters of the bureau in Cleveland for advice. This service is also at the disposal of committeemen who undertake to assist claimants in procuring settlements.

It is a fundamental policy of the bureau to handle all matters with a view to enabling the claimant to make the best possible settlement with the employer without resorting to the courts. Where it is possible for an injured man to return to work and thus preserve his seniority, particularly where he has acquired a worthwhile place on the seniority roster, the wisdom of trying to make a fair settlement without engaging a lawyer is stressed by the representatives of the bureau.

Naturally, many cases arise in which an employe and the railroad company are unable to agree upon the amount of compensation. In such cases the employes may enter into contracts with regional counsel calling for the prosecution of their claims upon a contingent fee basis of 20%. In addition to the privilege accorded a member to have his claim prosecuted by these lawyers, the rules which have been agreed upon between regional counsel and the Brotherhood require that these lawyers shall consult with and advise claimants as to their rights in exactly the same manner that the representatives of the bureau do when claimants call upon them at Cleveland, and for this they are permitted to make no charge.

It will be seen that, in effect, the Brotherhood has established sixteen offices, including the Legal Department of the Brotherhood, to which our injured members, or the dependents of those who may be killed, may go for information and advice concerning their claims for damages without being charged anything for that service.

Regional counsel have been impressed with, and have readily responded to, the proposition that no claimant shall be encouraged to employ counsel or to commence suit against a railroad until he, in his own mind, has satisfied himself that he cannot make a fair and amicable adjustment with his employer. Even after these attorneys have been employed by claimants the rules of the bureau require that before commencing suits they shall give the railroads a reasonable opportunity to settle the cases.

The above is a more or less general outline of the plan of the bureau. The General Counsel will set out in his report in some detail the work which has been carried on by the bureau since its inception.

Notwithstanding the fact that the bureau has been handicapped to some extent by reason of lack of adequate financial resources, as well as the fact that because it is a new departure in the affairs of the Brotherhood, necessitating a certain amount of education among our members as to its purpose, I am of the opinion that in the comparatively short time that the bureau has been in existence it has accomplished some splendid results in behalf of our members, and that as time goes on it will prove to be one of the worthwhile departments of the Brotherhood.

The General Secretary and Treasurer and myself, from time to time, have authorized for the necessary support of the bureau the expenditure of amounts from the General Fund of the Brotherhood to enable the bureau to carry on its work. These advances have been in the nature of loans to be returned to the General Fund as fees accrue from the handling of damage claims by regional lawyers.

At the time that this report is written there has been advanced to defray the expenses of the bureau the sum of \$19,827.60, of which amount \$6,429.96 has been paid back, leaving the bureau indebted to the General Fund in the [fol. 586] sum of \$13,397.64 as of January 31, 1931. A conservative estimate of the amount of money which is likely to accrue from cases which are now in the hands of attorneys for adjustment will more than wipe out the present deficit.

[fol. 587]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 13

EXCERPTS FROM GENERAL COUNSEL'S ANNUAL REPORT, 1930

Report On Legal Aid Bureau

Details leading up to the institution of the Legal Aid Bureau have been reported on in the President's annual report for 1930. On April 15, 1930, the President's special circular W-28 was issued. This circular reported the result of the referendum, which showed the endorsement of the Legal Aid Bureau by more than two-thirds of all of the lodges of the United States, and outlined to the membership the basis upon which the Bureau is intended to function. Immediately after that date, steps were taken to place the bureau in operation. Because of the fact that this was an innovation in the affairs of the organization and somewhat experimental in character, we proceeded to set up machinery to handle the affairs of the Bureau, with a good deal of caution. Due to the fact that it was necessary for the undersigned to carry on the routine legal business of the Brotherhood, it has not been possible to devote as much time to the establishment of the Bureau as might have been desirable, as a result of which, there has been more or less delay in getting under way.

One of the first steps to be taken was the selection and employment of investigators, and another and equally important step was a selection of regional counsel. In each instance, we have sought to engage the services of the best qualified men in the territory in which they were chosen to serve. Because of the acquaintance of the President and the undersigned with the conditions in the northwest territory by reason of first-hand contact, it was comparatively easy to make a selection of investigators and attorneys for that territory. And on May 1, 1930 the Bureau commenced to function on the railroads operating in that section of the country, with the selection of the firm of Davis, Michel, Yaeger & McGinley, of Minneapolis, Minnesota, as regional counsel for that district. At about the same time, arrangements were made with the firm of Newcomb, Newcomb and Nord, of Cleveland, Ohio, to represent our men in the Cleveland territory, which embraces in addition to Ohio, the state of West Virginia and parts of Pennsylvania, Kentucky and Indiana.

Because of the importance of selecting lawyers who, because of their experience, ability and character, were considered to be the best available for our purposes in the respective territories, it was felt that personal investigation by General Counsel should be made in each city where it was intended to locate regional counsel. A good deal of time was spent in apportioning the country and then, as the other legal affairs pertaining to Grand Lodge matters would permit, the undersigned visited various cities for the purpose of investigating and interviewing prospective appointees to represent the membership.

In selecting the location for regional counsel, various elements were taken into consideration, including accessibility to the membership to be served; the attitude of courts and juries at the point selected; and the opportunity for selection of competent counsel. Because of what appeared to be an unfavorable attitude on the part of the courts in some instances, and the unfavorable attitude of juries in other instances; because of delay incident to the handling of cases in certain jurisdictions and unfavorable court rules militating against the interests of claimants, certain states

were eliminated in the course of our consideration preliminary to locating the points at which regional counsel would be selected.

On May 15, 1930, an agreement was entered into by Mr. Joseph D. Ryan to represent Chicago and adjacent territory. On June 20, 1930, Mr. Thomas C. O'Brien was selected to serve the membership in the New England states. On June 25, 1930, Mr. Thomas J. O'Neill, of New York, was selected to represent New York City and the Atlantic Seaboard, including eastern Pennsylvania and part of Connecticut. On August 11, 1930, Searl & McElroy, of Syracuse, New York, were selected to represent western New York and north central Pennsylvania. On September 2, 1930, Mr. Charles Murphy of Houston, Texas, was selected to represent the Texas territory and part of southern Louisiana. On September 12, 1930, Mr. Frank C. Hanley, of Portland, Oregon, was selected to represent the north Pacific territory. On September 25, 1930, the firm of Foristel, [fol. 588] Mudd, Blair & Habenicht were selected to represent St. Louis and adjacent territory. And on the following day, the firm of Walsh & Aylward, of Kansas City, were selected to represent that territory. On October 9, 1930, Mr. Isaac Lobe Straus, of Baltimore, Md., was selected to represent that territory. Due to press of other Grand Lodge business, it has been impossible to engage attorneys to represent the membership in the balance of the country, but it is anticipated that very shortly we will have attorneys at Birmingham, Ala., Atlanta, Ga., San Francisco, Calif. and Denver, Colo.

In all of the selections above mentioned, except that of Mr. Frank C. Hanley and Mr. Charles Murphy, the undersigned went to the cities in which regional counsel live, and made a thorough investigation of all reputable attorneys, who were recognized as specialists in the handling of railroad damage suits, in each of the cities named. Information as to the standing and ability of these lawyers was obtained by interviewing, in many instances, local lodge officers, officials of local bar associations, judges of courts and insurance lawyers, who had theretofore handled business either for this or some other labor or insurance organi-

zation, and every available means was resorted to, to determine who best to engage. Messrs. Hanley and Murphy are and have been for many years, members of the Brotherhood and their reputation, standing and ability have been thoroughly known to the Grand Lodge officers for years. I think that we may safely say that in every instance we have selected the very best attorneys available.

Because of the fact that the business of the Bureau developed and is developing very gradually, and with a view to minimizing as far as possible, consistent with good service, the expense incident to the establishment and operation of the Bureau, investigators have been employed in some instances on a part time basis, with the understanding that if and when the needs of the Bureau warranted it, these men would be placed upon a full time basis. Our investigators, so far as it has been possible to do so, have been selected from among those who have had experience in the investigation of personal injury cases. They are all members of the Brotherhood.

At the time of making this report, a full-time investigator has been employed to serve our injured members and the dependents of those who may be killed in the northwest territory. He also serves the membership in the St. Louis and Kansas City territory, and assists in connection with cases arising in the Chicago territory. We also have a full time investigator representing the Bureau in New York City and adjacent territory. We have two full time investigators serving in Ohio and adjacent territory. We have part time investigators located at Syracuse, Chicago, San Francisco and Spokane, the latter to serve the north Pacific territory. These men investigate only such cases as are assigned to them for that purpose, and are paid on a per diem basis. At the present time, we are investigating and negotiating with certain other members of the Brotherhood to act as part time investigators in sections of the country not already covered.

The good which the Bureau may and is intended to do, has been retarded to some extent by lack of information on the part of the rank and file of members as to its having been established, as well as to its purposes, notwithstanding

that a good deal of publicity has been given to the Bureau through the medium of circulars sent to the lodges, as well as through the columns of the journal. Under date of August 15, 1930, a circular was sent by the Grand Lodge to all subordinate lodges, asking that each lodge appoint one or more members to report accidental death and major injury cases, so that the services of the Bureau might be tendered to claimants. Up to the time of making this report, only one hundred and seventy lodges out of a total of eight hundred and eighty one, had made such appointments. We notice, however, from day to day, an apparent increase in the demands being made upon the Bureau, as well as other evidence that the membership is gradually becoming to know and recognize the value of the department.

In an article appearing in the Railroad Trainman for September, 1930, all local and general chairmen were notified to report settlements of cases negotiated by them, to the Legal Aid Bureau. The article referred to; appeared over the name of the undersigned with the approval of the President of the Brotherhood attached. While no direct [fol. 589] communication was sent to general and local chairmen, it is reasonable to assume that most of them saw and read this article. However, there has been but one report by one general chairman. Neither have the general or local chairmen availed themselves of the services of the Bureau to any appreciable extent. Those who have done so, I am convinced, have been well pleased with the aid given them by the Bureau.

[fol. 590] Considering the fact that the Bureau has been in existence but eight months; that we have not been able to devote as much time and attention to it as might be considered desirable; that it is experimental in character; that the members of the Brotherhood have been slow to learn of its existence and to realize its purpose, I believe that the foregoing report indicates the need for such a department of the Brotherhood and the good that will undoubtedly result from the proper operation of the same. The results which have been obtained have been highly gratifying to the undersigned and we have received many expressions of

commendation from members of the Brotherhood and dependents whom the Bureau has assisted.

The statistical information which will accrue from the operation of the Bureau should be of incalculable value to the Brotherhood. With the limited experience which we have had up to the present time it seems perfectly evident that there is great need and good reason for amending the Federal Employers' Liability Act, particularly with reference to the defense of assumption of risk. The number of fatal and serious injuries resulting from the use of hand brakes is appalling and the evidence virtually conclusive that safer and more efficient braking appliances should be adopted.

RECAPITULATION

Cases in which inquiries were made and the services of the Legal Aid Bureau extended	398
Cases settled direct with railway company by injured party with the assistance of regional counsel and the Legal Aid Bureau and without expense to the claimant.....	6
Cases settled direct with railway company by injured party after regional counsel had been employed	2
Cases investigated and settlements effected....	18
Cases pending in hands of regional counsel....	48
Cases settled by regional counsel—Totaling \$112,825	14
Cases investigated and in which Bureau has not as yet been advised of final disposition	78
Total	564

Respectfully submitted,

TOM J. McGRATH,
General Counsel.

[fol. 591]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 14

EXCERPTS FROM BOARD OF TRUSTEES ANNUAL REPORT (1930)

LEGAL AID DEPARTMENT

BROTHERHOOD OF RAILROAD TRAINMEN

HISTORY OF ESTABLISHMENT

Excerpts from Board of Trustees' Annual Reports:
(1930)

President Whitney in his desire to protect our injured members and the dependents of members being killed, conceived the thought of establishing this Bureau and listed it among other subjects for discussion at the meeting of the International Association of General Chairmen held at Montreal, Quebec, October, 1929 when a Resolution was adopted by that Association endorsing the principle of the Legal Aid Bureau and recommended that the President of the Grand Lodge submit the question with his recommendations to a referendum vote of the lodges in the United States.

The State Legislative Representatives of the Brotherhood at their National Conference at Washington, May 6th to 10th inc., 1929, adopted a similar Resolution to that of the International Association of General Chairmen and requested the President to establish this Bureau.

The President, in accordance with the above recommendations, had prepared and introduced to the Board of Directors at their January, 1930 meeting, a tentative circular embodying a plan for the establishment of such a Bureau at Grand Lodge Headquarters. The Board, after giving careful consideration to the subject, went on record as accepting the plan and directed that the matter be referred to a referendum vote of the lodges in the United States.

The President, in order to obtain the sentiments of the lodges, submitted Special Circular No. W-24 with a referendum ballot to all lodges in the United States under date of January 22, 1930. At that time there was 881 lodges concerned in the plan, 599 voted in favor, 54 voted against and 228 did not vote at all. It required a two-thirds vote or 588 lodges to approve the plan.

[fol. 592]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 15

EXCERPT FROM PROCEEDINGS OF THE
SIXTH TRIENNIAL CONVENTION

The convention was now up to the special order of the day—consideration of the resolution relative to the Legal Aid Department.

WHEREAS, as a result of the affirmative vote of more than two thirds of the subordinate lodges of the Brotherhood, in the United States, the Legal Aid Department was established, and has been operating since May 1, 1930, and

WHEREAS, In order to establish said department, and to finance its early operations it was necessary that funds for such purpose be provided, and

WHEREAS, The President and the General Secretary and Treasurer advanced certain sums from the General Fund of the Brotherhood for that purpose, and

WHEREAS, The Committee on Grand Lodge officers reports in passing upon the action of the President and the General Secretary and Treasurer, in advancing said funds made the following statement: "We approve this part of the President's report, but we feel that if any further funds are to be advanced to maintain the Bureau the convention should pass on this question" and

WHEREAS, The establishment of the Legal Aid Department, has already proven a boon to many of the crippled

members of the Brotherhood, and the dependent widows and orphans of those killed in the performance of their duties, and

WHEREAS, The men engaged in the several classes of railroad employment represented by the Brotherhood are working in one of the most hazardous of occupations, and should have some proper means by which those seriously injured in service, may procure reliable advance and assistance to enable them to procure just and reasonable compensation from their employers, and the dependents of men killed in the service should likewise have similar protection, and

WHEREAS, the Protective Fund of the Brotherhood was accumulated for the purpose of protecting the interests of railroad employes, in their relations with their employers, and

WHEREAS, It appears to be more consistent that any monies needed to finance the operations of the Legal Aid Department should be advanced from the Protective Fund instead of the General Fund,

NOW, THEREFORE BE IT RESOLVED:

First: That we approve of the action of the President in establishing the Legal Aid Department in response to the overwhelming vote of the lodges in favor of the same, and the advancement of the necessary funds from the General Fund to get the department established and functioning,

Second: That the President and the General Secretary [fol. 593] and Treasurer be and they are hereby authorized to continue to advance and disburse necessary monies for the proper and efficient conduct of the Legal Aid Department from the Protective Fund of the Brotherhood, until the monies accruing to the Legal Aid Department from damage claims prosecuted by Regional Counsel are sufficient to make the Legal Aid Department self-sustaining.

Third: That when the monies accruing from the handling of such cases exceeds the amount necessary to maintain the Legal Aid Department the surplus shall be used to reimburse the Protective Fund for monies advanced.

Fourth: That if during the next triennial period sufficient funds to operate the Legal Aid Department shall not be available to finance the operations of that department any deficit in operating expenses shall be charged to and paid from the Protective Fund.

Respectfully submitted,

LAWRENCE LONG (200)

J. W. TACKETT (78)

J. S. HADDOCK (649)

C. E. SISLER (452)

D. O. EVANS (915)

Moved by Spahr (513) and Whittaker (244) that the resolution be adopted.

Steadham (81) requested information which was supplied by President Whitney. Smith (325) requested certain information. Hunt (235), Gerrald (697) and Meadows (232) spoke in favor of the resolution.

The following communication was read by Meadows (232) in support of his discussion:

Hinton, W. Va., May 18, 1931.

Mr. R. L. Meadows,

Brotherhood of Railroad Trainmen,

Dear Sir:

I am taking this means of trying to thank you and the Brotherhood of Railroad Trainmen, and especially the Legal Aid Bureau in regard to the death of my husband, who was a member of Lodge 232, and met with a fatal accident last October 30, 1930, while employed as a brakeman on the C. & O. Railroad.

A short time after the death of my husband the claim agent came to my house and finally offered me \$1,000 in settlement for the death of my husband, and said that the company was in no way to blame—that it was all my husband's fault. So I waited a while for the claim agent to come back again, but he did not come back. I then got

in touch with the Legal Aid Bureau and they investigated [fol. 594] my case, and explained the merits of the case to me. So I then turned my case over to the Bureau to handle as the claim agent never did come back.

I was notified that the Legal Aid Bureau had turned my case over to Newcomb, Newcomb and Nord, and they did a good job of it.

I want to say I am well pleased with the verdict they got for me, which was \$12,500, against the \$1,000 the company formerly offered me.

Again, thanking you all, I am

Sincerely yours,

MRS. EMMA V. WOOD

[fol. 595]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 16

PRESIDENT'S ANNUAL REPORT OF 1931

LEGAL AID DEPARTMENT

My 1930 report, pages AAA-262 to 268, carried the details leading up to the institution of this department, and pages AAA 553 to 591 gave a summary of the work handled May 1, 1930, to December 31, 1930. It was stated that the General Secretary and Treasurer and myself had, from time to time, authorized the expenditure of amounts from the General Fund of the Brotherhood to enable the department to carry on its work, and that the department was indebted to the General Fund in the sum of \$13,397.64 as of January 31, 1931.

As will be noted from the following resolution adopted by our Sixth Triennial Convention, the convention approved of the establishment of the Legal Aid Department, as well as the expenditure of funds made, and authorized

its continued operation, with advancement of any moneys needed in the future from the Protective Fund rather than from the General Fund:

Whereas, As a result of the affirmative vote of more than two-thirds of the subordinate lodges of the Brotherhood, in the United States, the Legal Aid Department was established, and has been operating since May 1, 1930; and

Whereas, In order to establish said department, and to finance its early operations, it was necessary that funds for such purpose be provided, and

Whereas, The President and the General Secretary and Treasurer advanced certain sums from the General Fund of the Brotherhood for that purpose; and

Whereas, The Committee on Grand Lodge Officers reports in passing upon the action of the President and the General Secretary and Treasurer; in advancing said funds made the following statement: "We approve this part of the President's report, but we feel that if any further funds are to be advanced to maintain the Bureau the convention should pass on this question"; and

Whereas, The establishment of the Legal Aid Department has already proven a boon to many of the crippled members of the Brotherhood, and the dependent widows and orphans of those killed in the performance of their duties; and

Whereas, The men engaged in the several classes of railroad employment represented by the Brotherhood are working in one of the most hazardous of occupations, and should have some proper means by which those seriously injured in service may procure reliable advice and assistance to enable them to procure just and reasonable compensation from their employers, and the dependents of men killed in the service should likewise have similar protection; and

Whereas, The Protective Fund of the Brotherhood was accumulated for the purpose of protecting the

interests of railroad employes, in their relations with their employers; and

Whereas, It appears to be more consistent that any moneys needed to finance the operations of the Legal Aid Department should be advanced from the Protective Fund instead of the General Fund; now, therefore, be it

Resolved:

First: That we approve of the action of the President in establishing the Legal Aid Department in response to the overwhelming vote of the lodges in favor of the same, and the advancement of the necessary funds from the General Fund to get the department established and functioning.

[fol. 596] Second: That the President and the General Secretary and Treasurer be and they are hereby authorized to continue to advance and disburse necessary moneys for the proper and efficient conduct of the Legal Aid Department from the Protective Fund of the Brotherhood, until the moneys accruing to the Legal Aid Department from damage claims prosecuted by Regional Counsel are sufficient to make the Legal Aid Department self-sustaining.

Third: That when the moneys accruing from the handling of such cases exceeds the amount necessary to maintain the Legal Aid Department the surplus shall be used to reimburse the Protective Fund for moneys advanced.

Fourth: That if during the next triennial period sufficient funds to operate the Legal Aid Department shall not be available to finance the operations of that department any deficit in operating expenses shall be charged to and paid from the Protective Fund.

Brother Tom J. McGrath, General Counsel of the Brotherhood, continued to supervise the department up to December 1, 1931, when Brother E. L. Harrigan, member of Lodge No. 102, was commissioned Deputy President and

placed in charge. Our records indicate that the total expense incident to the operation of the department during the year 1931 was \$40,924.68, while receipts from settlements of claims were \$17,559.04, making a net expenditure from the Protective Fund for the year of \$23,365.64.

The total expense since the inception of the department May 1, 1930, to the close of the year 1931 was \$57,133.22, while the total receipts from settlements of claims were \$23,004.84, leaving a total indebtedness to the Protective Fund as of December 31, 1931, of \$34,128.38. It was estimated that the possible fees in cases then pending approximated \$43,850.00, in addition to which there was held temporarily in escrow \$6,257.50 in fees already earned by the department.

Below is a summary of the work handled by the department during the year 1931, as per report submitted by Brother E. L. Harrigan:

The following are the names and addresses of regional counsel that were appointed in 1930:

Jos. D. Ryan, Suite No. 2007, 100 North LaSalle St., Chicago, Ill.

Thomas C. O'Brien, 11 Beacon Street, Boston, Mass.

Thomas J. O'Neill, 40th Floor, Chrysler Building, 42nd Street and Lexington Avenue, New York City, N. Y.

Searl & McElroy, 20th Floor, State Tower Building, Syracuse, N. Y.

Davis, Michel, Yaeger & McGinley, 419 Metropolitan Bank Building, Minneapolis, Minn.

Newcomb, Newcomb & Nord, 1528 Standard Bank Building, Cleveland, Ohio.

Charles Murphy, 411-412 Union National Bank Building, Houston, Texas.

Frank C. Hanley, Yeon Building, Portland, Oregon.

Foristel, Mudd, Blair & Habenicht, Title Guaranty Building, St. Louis, Mo.

Walsh & Aylward, 12th Floor, Commerce Building, Kansas City, Mo.

Isaac Lobe Straus, 1316 Munsey Building, Baltimore, Md.

The following appointments of regional counsel were made in 1931, on the dates indicated:

London, Yancey & Brower, 529-538 First National Bank Building, Birmingham, Ala., appointed January 13, 1931, [fol. 597] Branch & Howard, 839 Hurt Building, Atlanta, Ga., appointed January 6, 1931.

M. Mitchell Bourquin, Hunter-Dulin Building, San Francisco, Calif., appointed February 12, 1931.

Frank C. Myers, University Building, Denver, Colo., appointed February 11, 1931.

A. G. Morrison & Sons, 517 Ramsey Tower, Oklahoma City, Okla., appointed July 13, 1931.

The resignation of regional counsel, Isaac Lobe Straus was received and accepted on October 9, 1931. His successor has not as yet been appointed.

Two additional full-time investigators have been appointed to serve in the Chicago and San Francisco territories, and one part-time investigator has been appointed to serve the territory of San Angelo, Texas.

[fol. 598]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 17(a)

JOURNAL ENTRY OF THE COURT OF APPEALS OF
CUYAHOGA COUNTY, OHIO, OF JUNE 7, 1933

Wednesday Morning, June 7, 1933

12649

In Re: The Petition of the Committee on Rule 28
of the Cleveland Bar Association, Thomas B.
Bolton, et al.

Court convened pursuant to adjournment with the Judges
all present.

Appeal by Newcomb, Newcomb & Nord

This cause was heard on appeal upon the petition, the original journal entry authorizing and directing an investigation as to alleged unethical practices of lawyers practicing in and before the Court of Cleveland, and upon the motion and order directed to the respondent law firm of Newcomb, Newcomb & Nord, "to appear and show cause, if any it has, why it or any of its members should not be:

(1) Enjoined from acting as regional counsel for the Legal Aid Department of The Brotherhood of Railroad Trainmen in representing claims and cases of its members.

(2) Enjoined from prosecuting further or otherwise handling those claims and cases now represented by them which arose out of accidents to members of The Brotherhood of Railroad Trainmen and which claims and cases originated with and were procured by and through the Legal Aid Department of The Brotherhood of Railroad Trainmen.

(3) Enjoined from hereafter accepting and/or handling and prosecuting claims and cases on behalf of the members of said Brotherhood originating with or solicited or procured through the Legal Aid Department of The Brother-

hood of Railroad Trainmen, and referred to said law firm by said Legal Aid Department.

(4) Subjected to such further orders or remedies as the evidence warrants."

and upon the evidence and stipulation presented in the record and transcript from the Common Pleas Court, and other evidence; the issues thereon and ther from relating to alleged unprofessional conduct of respondent law firm arising from its relationship with the Legal Aid Department of The Brotherhood of Railroad Trainmen, a union and brotherhood of men engaged in train service of railroads in the United States.

The Court finds that the Legal Aid Department is a branch, or bureau, of said Brotherhood of Railroad Trainmen, and that the respondent firm, Newcomb, Newcomb & Nord, is one of the regional counsel for and an integral part of said Legal Aid Department under a plan which is nation wide in scope.

The Court further finds that the purposes and objects of said plan of the Legal Aid Department, with the knowledge and assent of respondent firm are: to keep itself informed as to injuries to and death of members of The Brotherhood of Railroad Trainmen arising out of and caused in the course of their employment; to contact those members thus injured, or the next of kin of these members thus killed; to tender its services, consisting of investigation of the facts of accidents in which such members are injured or killed and the procurement of legal advice from regional counsel for such members, or their next of kin or their personal representative; and if lawsuits for such members become desirable, to procure the cases for its regional counsel.

The plan further provides for a charge to the member or his next of kin or personal representative, of twenty per cent of the amount of recovery of the claims obtained for regional counsel, fifteen per cent of which is paid to regional counsel and five per cent of which is paid to the [fol. 599] Legal Aid Department, the soliciting agent, by and through its regional counsel. This payment of five per cent is provided for in the contract of retainer entered into between Newcomb, Newcomb & Nord, as regional coun-

sel, and the member or his next of kin or personal representative. The form and substance of this retainer contract is specified by the Legal Aid Department.

The Court also finds that this arrangement and plan results in the solicitation of professional business for and by Newcomb, Newcomb and Nord, regional counsel, contrary to and in violation of the Canons of Legal Ethics of The American Bar Association and of Rule XXVIII of the Rules of the Supreme Court of Ohio.

The Court further finds that respondent firm, Newcomb, Newcomb & Nord, in their association and affiliation with the Legal Aid Department of The Brotherhood of Railroad Trainmen, has been and is guilty of unprofessional conduct amounting to a breach of the said Canons and of the said Rule.

The Court further finds that the plan, so far as it embraces any connection with or provides for regional counsel, and affects the relations of regional counsel with, for and on behalf of the members of The Brotherhood of Railroad Trainmen, through said Legal Aid Department, should be denounced; and that the law firm of Newcomb, Newcomb & Nord are subject to discipline by way of either reprimand, suspension or disbarment, as provided for in Section 1707 of the General Code of Ohio and Rule XXVIII of the Rules of the Supreme Court of Ohio, and within the inherent power of this Court to administer.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the aforesaid plan be, and it is hereby denounced; and that the law firm of Newcomb, Newcomb & Nord, and its members, be, and are hereby reprimanded for entering into and continuing such arrangement with said Legal Aid Department of The Brotherhood of Railroad Trainmen.

It is Further ordered that the law firm of Newcomb, Newcomb & Nord pay the costs of this proceeding, to all of which the respondent law firm excepts.

12649

In Re: The Petition of the Committee on Rule 28
of the Cleveland Bar Association, Thomas B.
Bolton, et al.

Appeal by Newcomb, Newcomb & Nord.

The respondent law firm having filed its motion for a new trial within three days after the decision of the Court was announced, and having refiled said motion within three days after the judgment of the Court in this cause was duly entered upon its journal, the said motion for a new trial is by the Court overruled, to which the respondent law firm excepts.

Court of Appeals Journal 9, page 669 and 670

June 7, 1933

WHEREUPON Court convened and adjourned from day to day until June 8, 1933.

[fol. 600]

CERTIFICATE TO COMMON PLEAS RECORD AND
COURT OF APPEALS

THE STATE OF OHIO,
CUYAHOGA COUNTY, ss.:

I, Emil J. Masgay, Clerk of the Court of Common Pleas and Court of Appeals, within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing copy is taken and copied from the records in Court of Appeals Journal 9 page 669 and 670, dated June 7, 1933 of the Proceedings of the Court of Appeals within and for said Cuyahoga County, and that said foregoing copy has been compared

by me, with the original record Journal 9, page 669 and 670 and that the same is a correct transcript thereof.

(Seal) IN TESTIMONY WHEREOF, I do hereby subscribe my name officially and affix the seal of said Court at the Court House in the City of Cleveland, in said County, this 22nd day of September A.D. 1961

/s/ EMIL J. MASGAY
Emil J. Masgay—Clerk

I, Julius M. Kovachy, Presiding Judge of the Court of Appeals within and for the Eighth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify, that Emil J. Masgay was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas and Court of Appeals, within and for said Cuyahoga County, and State of Ohio, and that said Clerk is the officer in whose custody said original record in Journal 9, page 669 and 670 is required to be kept by the Laws of the State of Ohio, and authorized by the Laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of Law.

Signed by me and dated at Cleveland, Cuyahoga County, Ohio, this Twenty-second day of September A.D. 1961.

/s/ JULIUS M. KOVACHY
Presiding Judge,
as aforesaid

I, Emil J. Masgay, Clerk of the Court of Common Pleas and Court of Appeals, Court of Record of Cuyahoga County, do hereby certify that Julius M. Kovachy was at the date of the foregoing certificate the duly elected, qualified and acting Presiding Judge of the Court of Appeals of Cuyahoga County, Ohio.

(Seal) IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at Cleveland, this Twenty-second day of September A.D. 1961.

/s/ EMIL J. MASGAY
Emil J. Masgay, Clerk

[fol. 601]

PLAINTIFF'S EXHIBIT 17(b)

IN THE COURT OF APPEALS OF CUYAHOGA COUNTY,
STATE OF OHIO, EIGHTH DISTRICT

No. 12,649

3 Motion to Enjoin

In Re: Petition of the Committee on Rule 28 of
the Cleveland Bar Association, etc., et al.

Opinion—May 8, 1933

ON APPEAL

(Mauck, J., of the Fourth District, Sitting by Designation
with Lieghley, P.J. and Levine, J., of the Eighth Appel-
late District.)

MAUCK, J.

[fol. 602] "The results of this plan are these: The Legal
Aid Department by publication in the Brotherhood Journal,
by circularizing the locals, by personal representations and
by about all the methods known, is constantly soliciting
legal business for the respondent firm. That firm in turn,
knowing exactly how its business is being solicited for it
impliedly assents to such solicitation and because it ex-
pects to get a large volume of business fixes an iron-clad
fifteen percent contingent fee, plus a further five percent
charge to be collected by it and paid over to the soliciting
agency. . . .

[fol. 603]

PLAINTIFF'S EXHIBIT 17(c)

EXCERPTS FROM RESPONDENTS' BILL OF EXCEPTIONS

VOLUME I.

IN THE COURT OF COMMON PLEAS

No. 360395

**In Re: The Petition of the Committee on Rule 28 of the
Cleveland Bar Association, Thomas B. Bolton, et al.**

[fol. 604]

MONDAY, JANUARY 4, 1932; 1:15 P. M.

RESPONDENTS' CASE

Whereupon the Respondents, further to maintain the issues on their parts to be maintained, called as a witness **ALEXANDER F. WHITNEY**, who, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Day:

Q. Your name, please?

A. Alexander F. Whitney, President of the Brotherhood of Railroad Trainmen.

[fol. 605] **Q. Mr. Whitney, as an officer of the Brotherhood, have you personally kept in touch with the various steps that have been taken to organize this Legal Aid Bureau?**

A. I have as to its general purposes and policies.

Q. And is that true from the time that the organization [fol. 606] was first suggested until the present time?

A. That is true.

Q. When was the subject of organizing a Legal Aid Department first broached by the Brotherhood or to the Brotherhood or among the members of the Brotherhood—approximately when?

A. In 1906 our National Legislative Representative at that time, Mr. H. R. Fuller also represented the Brotherhood of Locomotive Engineers, the Order of Railway Conductors, the Brotherhood of Locomotive Firemen and Enginemen, and the Brotherhood of Railroad Trainmen at Washington, D.C., and he was instrumental in bringing about the enactment of the Employers' Liability Law, assisted by these organizations, in 1906, and it was declared unconstitutional by the Courts, and the bill was reintroduced and became a law in 1908. About that time Mr. Fuller took quite an interest in the theory that the organization should institute a Legal Aid Department for all of their members in railroad service; and all of the organizations went along with us perhaps except the Order of Railway Conductors. On account of their objection the scheme did not materialize. The next record we have, and with which I am familiar was at our convention in Detroit in 1916, where a resolution was adopted that steps should be taken to set up a Bureau, and that was then followed by similar action in 1919 and again in 1922, and at that time the general committees of our organization were authorized and instructed to attempt to enter into agreements with the railways permitting engine members to be represented by representatives of the Brotherhood. No action was taken with this that was constructive at that time.

Q. In 1922 what body of the Brotherhood took that action or made that recommendation?

A. Our International Convention.

Q. That Convention is held how frequently?

A. Each three years.

Q. Each three years?

A. Yes, sir.

Q. And in 1919 you spoke about some suggested action. Was that also at a national convention?

A. Yes, sir; and the same is true in 1916. In 1925 our convention took similar action, and again in 1928 our convention adopted a resolution dealing with the matter, but it was difficult to carry out the wish of the membership.

[fol. 608] A. And when we decided to organize the Bureau, or before we decided to organize the Bureau; the matter was called to my attention by our State Legislative [fol. 609] Representatives who held a conference in Washington in May, 1929. They unanimously adopted a resolution urging me to take steps to institute a Legal Aid Department.

Q. That is, the Legislative Representatives of the Brotherhood?

A. Of the Brotherhood, representing 42 states in the Union. I gave that matter consideration and listed it for discussion at a meeting of the International Association of the Brotherhood of Railroad Trainmen held in Montreal, October 5th to 9th, 1929. We assigned men on the affirmative and on the negative, to discuss the advisability of instituting a Legal Aid Bureau. This International Association is made up of key men. They are the officers of our organization and chairmen of our Grievance Committees. There was about 115 representatives at that meeting, and after a debate lasting several hours, the International Association, by almost unanimous vote, approved of the scheme and requested me to take the matter up with the lodges or with the coming convention, and undertake to institute a Legal Aid Department.

[fol. 610] And so we submitted a proposition to our membership in January, 1929—in 1930, and we asked our lodges to give the matter consideration and to determine whether or not a Legal Aid Department should be established.

Q. By what method was that done?

A. That was done through circular letter. We set out all of the facts, stating to the lodges the action of the legislative conference, the action of the conference in Montreal, the action of our Board of Directors in January, 1930, approving of the plan; and we asked them for their authority to institute the department, and by a vote of eleven to one, the lodges voted in favor of the plan, and on May 1, 1930, the Department was set up.

[fol. 611] Q. Did you receive from Mr. McGrath a report [fol. 612] or survey relative to the West Virginia situation?

A. I did.

[fol. 613] Q. Now, Mr. Whitney, were there any other actions taken by the Brotherhood prior to the establishing of the Bureau on May 1, 1930?

A. None other than I have stated. I have called attention to the several actions taken.

Q. Yes, sir.

A. Including the vote of the lodges, the action of the Board of Directors, the International Association and Legislative Conference, Mr. McGrath's investigation of conditions in West Virginia, and our discussions on the matter. Of course, we put in considerable time analyzing the report, and we discussed the advisability of instituting a Legal Aid Department with our various officers, recognizing that it was a somewhat new departure, and [fol. 614] that every Christian and humanitarian movement that has ever been instituted has usually met with opposition. Following the institution of the department, we then set out to select regional counsel.

Q. I wish you would tell the Court just what was done with relation to selecting regional counsel. In the first place, how many regional counsel are there?

A. Fifteen at this time. We have four in the east, one in Cleveland, one firm in Rochester, one in Boston and one in New York City. We have regional counsel in the south at Birmingham, Atlanta and Houston, and in the west at Chicago, Minneapolis, Kansas City, St. Louis, Oklahoma City, San Francisco, Portland and Denver.

Q. What is the territory comprised within the regional counsel's district here?

A. Roughly speaking, it is Ohio, West Virginia, the western section of Pennsylvania, a portion of Indiana, and I don't know whether a part of New York comes into this zone or not.

Q. Will you tell the Court just how you went about selecting regional counsel? Tell us what was done.

A. I discussed this matter with Attorney McGrath, and I told him that I felt we should have reputable attorneys or firms of attorneys who had had experience in this line of [fol. 615] work, and who had a standing in their community, and men that are willing to do the job, not for the fifty percent of the net settlement, but for what we thought was a reasonable fee of about twenty percent. I said to him, "I want you to look around and make a survey in the various cities where you feel that regional counsel should be employed, confer with the Bar Associations, with the judges, the Courts in those cities, with our membership, and, if the opportunity affords, with citizens of high standing who are familiar with these people, and after you have determined in your own mind who should be appointed a representative, you may then drop in and we will discuss the matter further and undertake to agree upon the appointments. The first appointment that was made was Davis, Michael, Yaeger and McGinley, of Minneapolis. It did not take so long to make that appointment because I had worked in that territory for a great many years, and McGrath had lived in St. Paul, and we both knew the firm and knew a whole lot about their standing. The second appointment that was made was Newcomb, Newcomb and Nord of Cleveland. When Mr. McGrath made his investigation and recommended this firm to me, I held the appointment up for some [fol. 616] days because I had never met but one member of that firm.

Q. Which member was that?

A. Judge Newcomb.

Q. In what connection did you meet him?

A. He addressed our convention in 1925 and was introduced as "Judge Newcomb" and at that time, and for some time thereafter I thought he was a judge of one of the Courts here. I did not know that he was practicing, but some time before the Legal Aid Bureau was instituted, I learned that he was a practicing attorney. I, as I say, held up the appointment for a few days, and I discussed with one or two prominent attorneys here in the City the advisability of appointing Newcomb, Newcomb and Nord, and asked several questions regarding their standing. I had been told that one member of the firm was a doctor, that Judge Newcomb was a member of the Engineers Brotherhood, that he represented the Engineers Brotherhood. I believe I discussed his standing with Mr. Johnson.

Q. Who is Mr. Johnson?

A. President of the Engineers Brotherhood. I was told that Newcomb, Newcomb and Nord was a firm that turned down or refused to handle many personal injury cases; that it was their policy in many instances to advise the injured member to return to his home and undertake to get [fol. 617] well, to try to get back to work and preserve his seniority. That very strongly appealed to me because I recognize the value of a job, and I recognize that it is far better for an injured railroad man to get well and go back to his job and be able to earn a living for himself and his family than it is to make a settlement and lose his job and perhaps be a burden upon society later on. So I told McGrath to go ahead and make the appointment. I believe the third appointment that was made was Attorney O'Neil of New York.

Q. I don't care about the names of them.

A. And then I put—

Q. Prior to the time that the appointment was made of Newcomb, Newcomb and Nord, did you know R. B. Newcomb at all?

A. I don't recall that I ever met the man.

Q. Did you know Mr. Nord?

A. I did not. I may have met him, but I would not have known him.

Q. Do you know whether the names of other law firms had been considered by Mr. McGrath here in Cleveland?

A. I believe that he considered the firm of Day and Day.

Q. Yes?

A. I think that he considered four or five other firms here in the City, but in his recommendation, he recom-[fol. 618] mended Newcomb, Newcomb and Nord.

[fol. 619] Q. Go ahead, Mr. Whitney.

A. Our instructions were that our injured members should make every honorable effort to secure just settlements without even going to the lawyers. Some of them are assisted by their committeemen. Our instructions were that the employment or even going to an attorney should be a thing of last resort, that if they could not secure substantial justice from the railroad, then, of course, they would be compelled to secure the advice of lawyers. We told them through the columns of the Journal, our monthly magazine, that the Bureau had been instituted for their benefit, and we gave the membership all of the information that was possible through the columns of the Journal, and directed our officers and other representatives to bring the matter up in lodge meetings, and explain to them that the Brotherhood had taken an advanced and pro-[fol. 620] gressive step by instituting the Legal Aid Department, and that it was their department, and that it was organized for their protection; and that they had a perfect right to take advantage of it. In doing this we did not say a word in derogation of any lawyer or any firm of lawyers. We merely instituted the Bureau, as I have said, for the protection of our members, and for that reason only.

[fol. 621] Q. You didn't get the viewpoint, then, of lawyers about an arrangement like this, did you?

A. No. We didn't want it.

Q. In other words, you set up this department having in mind your own particular viewpoint; isn't that right?

A. Well, we had the viewpoint of our own lawyers, and we had our own viewpoint.

Q. When you say the viewpoint of your own lawyers, who were they?

A. Mr. T. J. McGrath is our general counsel.

Q. He is counsel for the Brotherhood of Railroad Trainmen isn't he?

A. Yes, sir.

[fol. 622]

TUESDAY, JANUARY 5, 1932; 9:15 A. M.

Thereupon the Respondents, further to maintain the issues on their parts to be maintained, called as a witness T. J. McGRATH, who, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Day:

Q. What is your name?

A. T. J. McGrath.

Q. Mr. McGrath, you have heretofore testified before Judge Carpenter?

A. Yes.

Q. In this general proceeding, have you not?

A. Yes, sir.

Q. What is your connection with the Brotherhood of Railroad Trainmen?

A. I hold the position designated as general counsel, which involves the supervision of all legal matters concerning the Brotherhood affairs.

[fol. 623] Q. As general counsel for the Brotherhood, what personal connection did you have with the establishment of the Legal Aid Department?

A. I probably did the major portion of all of the work in connection with the establishment of the Legal Aid Department.

Q. When did you start in on that work?

A. My first experience with reference to the establishment of a Legal Aid Department came while I was local counsel.

Q. When did you first start in on whatever work you did in connection with the Legal Aid Department that was actually established and began operations May 1, 1930?

A. I should say it was some time around the first of the year 1929.

Q. At whose request did you take that work up?

A. Why, originally I took it up on my own initiative.

Q. Did you discuss it with President Whitney?

A. I did after a time.

Q. When?

A. Along in, oh, about March, around the 1st of March, [fol. 624] 1929.

[fol. 625] Q. Something was asked Mr. Whitney yesterday by Mr. Fulton along the general line that the regional counsel who were selected were those who had been engaged in ambulance chasing before they were selected. Is that a fact?

A. That is not a fact, generally speaking. We have men, wherever we have been able to secure them, who are experienced in the trial of damage suit cases. Now, you can differentiate between ambulance chasers. I don't think a great deal of odium attaches to ambulance chasing where the fellow handles his clients with decency and treats other lawyers on a fair plane when he solicits business. I consider it is unethical, but I mean from a purely moral standpoint. We sought to select men who may have used certain means to induce clients to come in there, but who would stand the scrutiny of any fairminded man as to whether their practices were reasonably decent.

[fol. 626] Q. All right. When you revived this dormant plan about the Legal Aid Department, or, to put it another way, when you started to think it over again, in connection with that did you take into account and consider the canons of legal ethics and professional ethics generally?

A. I made no study of the canons of legal ethics.

[fol. 627] Q. Did you make contracts with regional counsel other than disclosed by the instructions that were forwarded to them and initialed by them?

A. Just in the form of a letter confirming my verbal discussion with them, and telling them that we had, after due consideration, selected them as regional counsel, and enclosing the letters and asking them to subscribe to them and return them.

[fol. 628] TOM J. McGRATH, being first duly sworn, was examined and testified as follows:

Examination.

By Mr. Fulton:

[fol. 629] Q. Does the membership fee and dues which a member of the Brotherhood pays annually entitle him to [fol. 630] membership in, if I may use that expression, and benefits from the Legal Aid Department?

A. Of course—

[fol. 631] Q. When a man is injured, the legal aid department communicates with him, doesn't it?

A. Yes, sir. That is, if it is a major injury, a serious injury.

[fol. 632] Q. All right. Having examined the report (Plaintiff's Exhibit 6), what do you then do?

[fol. 633] A. Generally we write to the injured man and tell him that his case has been reported to us, and call his attention perhaps, and usually, to the establishment of the Bureau and the purpose for which it was organized, and tell him that if he desires us to advise him as to his rights, and what we think that his damages should be, or what would be a fair settlement, we ask him to fill out this blank and send it in together with any doctors' reports, depending upon the character of the injury. If it is a hand or a

foot or an arm off, we have no trouble about that. If it is a back injury, we probably would have to know about the seriousness and the extent of the injury, and we have suggested on a number of occasions that they come to Cleveland and be examined by a doctor, if they care to.

Q. That is, after the receipt of this—

A. Original notice; yes, sir.

Q. —original notice from the subordinate lodge?

A. Yes, sir.

Q. And that is before you receive a notice from the injured man?

A. It may be before and it may be afterward, depending upon the kind of a case it is.

[fol. 634] Q. Upon receipt of that report what do you then do, Mr. McGrath?

A. We write the claimant, if the report is comprehensive enough to come to some definite conclusion as to the person's rights, we write them and suggest the course that they pursue with the claim department, what they should ask for, and if it happens to be a death case, we take the wages and analyze the expectancy and the earning power and that sort of thing and tell them what we think they ought to have. I qualify that by saying that we have not been doing that in Ohio since this lawsuit was started by the Cuyahoga Bar Association, but we have elsewhere.

Q. That action is an action asserting that you are engaged in the practice of law?

A. Yes, sir.

Q. But from the time that your organization came into being until the commencement of that action, those are the things which you did?

A. Substantially, yes. Of course, that—

Q. In other words, you would decide first whether there was liability under the Federal Liability Act upon the facts of the accident?

A. Of course, that may entail more or less correspondence before we reach that point, you understand, but eventually we do that.

Q. That correspondence would be between you and the claimant?

A. Yes.

[fol. 636] Q. Or between you and the investigator, possibly?

A. Yes; or it might mean calling in a witness to the office, a member of the Brotherhood who knows about it.

Q. In order to get all of the facts and be certain about the facts?

A. In order to be convinced in our own minds that we are right and on safe ground in giving an opinion.

Q. Now, once having decided that there was not liability what advice would you give the injured man?

A. Well, we would tell him to try and settle his case as best he can, and especially if he can go to work and preserve his seniority. We would find out what he had been offered, and sometimes we do say, "Well, we are satisfied that if you will just handle it in such and such a way, the claim department will probably raise it a thousand or two, but if you can't get any more, you better take what you are offered."

Q. In other words, in the case of non-liability, then, you would give some idea to the man of what he ought to get in a settlement and keep his job?

A. Yes, sir.

Q. All right. Do you still do that?

A. Yes, sir.

Q. Let's assume you determine the case is one of liability, what then do you do?

A. Well, we tell him what we think his case ought to be [fol. 637] worth, what he ought to get in the way of a settlement. We do the same thing to the grievance men, too, if they write in on behalf of a man and want to know about a case and the value.

[fol. 638] Q. Now, occasionally you will get a case from the investigator and you will determine that there is liability?

A. Yes, sir.

Q. And the injuries are not serious. Do you then advise the man to settle direct and keep his job?

A. Always.

Q. Are you still doing that?

A. Yes, sir.

Q. Then, if you have a case that you determine to be a liability case and the injuries are serious, you then advise an amount that that case is worth in your opinion?

A. Yes, sir.

Q. And you so advise the man?

A. Yes, sir.

Q. You still do that?

A. Yes, sir; with the exception of the State of Ohio. I don't know why we should not, only we just decided that we would not while this was pending.

Q. Well, having decided the amount, you advise the man if he can get that amount or within the range of that amount, to take it and preserve his seniority rights?

A. We always do that when a man has any seniority rights that are at all worth while. We tell him to settle it up the best he can get and not jeopardize his job, because it not only means his job on that railroad, but he is virtually [fol. 639] blacklisted on every other railroad. So we always do that when they can go back and work.

Q. If the man, of course, does not get the amount that you think the case is worth, he is then sent to your regional counsel?

A. No; not necessarily. In fact—

Q. Where does he go?

A. I don't know that he is ever sent to a regional counsel.

Q. Did you ever take any injured claimant to your regional counsel in this locality?

A. I never did; no, sir.

Q. Did you ever have any of the regional counsel or members of the firm that are regional counsel come over and talk to some man in your office?

A. Yes, sir.

Q. You have done that, haven't you?

A. Yes, sir; we have done that quite frequently. I don't want you to get the wrong impression from that other ques-

tion. I personally haven't taken anybody to Newcomb, Newcomb and Nord's office. I have sent Mr. Harrington over with men.

Q. Oh, you have sent Mr. Harrington over?

A. Yes, sir.

Q. Did you ever send Mr. Hawley over?

A. No; I don't think I have.

Q. Newcomb, Newcomb and Nord are regional counsel?

[fol. 640] A. Yes, sir.

Q. For this legal department?

A. In this territory.

Q. For this territory?

A. Yes.

Q. And that region covers what?

A. The State of Ohio, the western part of Pennsylvania to a line drawn north and south, say about through Altoona, Pennsylvania; the State of West Virginia, the northern part of Kentucky and over about as far as Indianapolis in Indiana. Now, I say that for the purpose of clarity and convenience, although we don't assign any certain geographical area to lawyers. We assign certain lodges on certain railroads to certain regional counsel, and then, of course, we say to our men that it is optional—in all our literature we say that it is optional with them to choose any regional counsel they see fit.

Q. In other words, they may choose any among the various regional counsel?

A. Any counsel who cares to handle their case and who can get jurisdiction over the railroad.

[fol. 641] Q. Do you still in Ohio since that suit was filed advise an injured man whether he has a case of liability?

A. No, sir.

Q. Who does that now?

A. Newcomb, Newcomb and Nord.

Q. That is submitted to Newcomb, Newcomb and Nord?

A. Yes, sir.

Q. In connection with the particular case?

A. Yes, sir.

Q. Do you still advise the man, if it is not a case of lia-

bility that he should go back to his work and settle direct with the railroad?

A. Oh, I have done that.

[fol. 642] Q. What arrangement does the legal aid department have with regional counsel regarding the compensation to be received by regional counsel for handling injury and death claims?

A. We have an agreement with them that they will charge the injured man 20% if he signs a contract with them. If he does not, they make no charge for their services—merely for advice, and of this 20%—

Q. For such advice whom do they charge?

A. They don't charge anybody.

Q. Do they charge the Brotherhood?

A. No.

Q. Do they charge the legal aid department?

A. No, sir.

Q. But if they take the case—

A. They take it on a 20% contingent fee basis.

Q. A 20% contingent fee basis?

A. Yes, sir.

Q. And when the case is settled, the regional counsel gets 20% of the recovery and the injured man 80%?

A. Yes, sir.

Q. And then what does the regional counsel do with the 20%?

[fol. 643] A. The regional counsel sends us 5%, that is, 5% of the net amount recovered, except, I think, in one or two cases where they sent us 6%.

Q. In other words, there are certain classes of cases you get 6% and not 5%?

A. No. There are certain sections of the country where our contract is just a little more advantageous from our standpoint.

Q. In other words, the regional counsel then remits or refunds or pays over to the legal aid department five or six percent of the recovery?

A. Well, that's another thing, of course, that we are not doing in Ohio right now.

Q. But that is your plan?

A. That is our plan; yes, sir.

Q. It is not 5% of the fee?

A. No, sir.

Q. 5% of the recovery?

A. Of the net amount recovered. The expenses are deducted first, the witness fees and such things.

Q. In other words, the lawyer turns back to the legal aid department one-fourth of his fee?

A. Yes, sir. You call it his fee. We don't determine his fee exactly. Our men know ahead of time that a certain portion of that goes to the Legal Aid Bureau.

[fol. 644] Q. It is by arrangement with these counsel that the claimant gets a 20% contract with the lawyer?

A. That's right.

Q. And it is by arrangement between the regional counsel and the legal aid department that you get 5% of the recovery?

A. Yes, sir.

Q. When I say "you" I mean the legal aid department?

A. The Brotherhood gets it. What I want to say was that the member knows, the claimant knows that 5% of that goes to the Brotherhood before it is deducted. He knows that that is to maintain the legal aid department. He knows that when his contract is signed. In fact, I think so far as Newcomb, Newcomb and Nord are concerned, they have a contract now that contains an assignment of 5% to the Brotherhood to maintain the Bureau.

Q. Let's get back to the original practice. You started this Bureau in operation in Ohio and in this region that you have described to us in 1930?

A. Yes.

Q. And since that time Newcomb-Newcomb and Nord have gotten cases from and through the legal aid department?

A. Yes, sir.

Q. And at the out-set the arrangement was just as you described it here a moment ago?

A. Right.

[fol. 645] Q. And on cases that Newcomb, Newcomb and Nord settled or obtained money in payment in discharge of judgments; Newcomb, Newcomb and Nord collected 20% regularly and then paid over to the department 5%!

A. When they were doing that, yes.

Q. When did they stop doing that?

A. Well, right after the lawsuit was started. That was in April.

Q. April of 1931?

A. 1931.

[fol. 646] Q. But up to that time they did turn back and pay over to you the 5%?

A. Yes, sir.

Q. What kind of contracts do they take now from members of the Brotherhood on cases that come to them through the department?

A. Well, I recall having had submitted to me a form of contract that they intended to use in Brotherhood cases. Now, perhaps I had better get that.

Q. Do you have that form with you?

A. No; I haven't, but it attempted to differentiate between what the Brotherhood was to get and the lawyer. The lawyer was to get 15% and we were to get 5%, and the man signed that as signing and authorizing the attorney to pay us the 5%.

[fol. 647] Q. In other words, the old contract was a straight contract between the injured man and Newcomb, Newcomb and Nord or between the administrator and Newcomb, Newcomb and Nord for 20%?

A. That's right.

Q. And then under and by virtue of this separate agreement Newcomb, Newcomb and Nord would pay back 5% of the recovery?

A. That's it.

Q. Now, under this new plan how much percent is allowed to Newcomb, Newcomb and Nord in the contract?

A. 15%.

Q. And that, as you recall it, specifically says that Newcomb, Newcomb and Nord will get 15%?

A. Yes, sir.

Q. And then the injured man assigns to the Brotherhood a 5% interest?

A. That's right.

Q. In other words, that's the method now intended at least to be used?

A. Yes, sir.

[fol. 648] Q. I asked you whether you have any other plan?

[fol. 649] A. Well, eventually if we can't get it that way, we will arrange for an assessment on the members, I suppose, to do it as we are doing now, paying it out of the protective fund.

Q. Isn't this the plan you suggested the other day, and if I am mistaken about it correct me, that the Brotherhood Legal Department will take a contract with the injured man for 5%, and that Newcomb, Newcomb and Nord will have a contract with the injured man for 15?

A. No; I don't think I said that. I never had that in mind. What I had in mind and what I have had in mind is the arrangement that I have just suggested, that is, that there be one contract with the lawyer, but the claimant would assign 5% to the Brotherhood. I had another plan in mind, but the institution of the plan, of course, depends on what [fol. 650] the Court says as to what we may or may not do, and if you want me to answer that question fully I would just as soon tell you what that plan was.

[fol. 651] Q. And it is fact, isn't it, that these men who had experience soliciting cases solicited for the very lawyers whom you now have as regional counsel in most instances?

A. That is true in two cases. By that I mean two lawyers—two sets of lawyers.

Q. And one of them is Newcomb, Newcomb and Nord?

A. Yes, sir.

Q. Who is the other?

A. Davis, Michael, Yeager and McGinley.

[fol. 652] Mr. Morris: But if the men finally get to the point of adopting your plan in your union it will mean that in this region Newcomb, Newcomb and Nord will have a monopoly on those cases?

The Witness: Yes, sir.

Mr. Morris: That's right, isn't it?

The Witness: If they cooperate with us in our plan to carry out our suggestion, cases will not go to any other lawyers or members of our Brotherhood, unless we should broaden our list.

[fol. 653] Q. You are out advertising your own lawyers, Newcomb, Newcomb and Nord?

A. If we think they need lawyers we are boosting Newcomb, Newcomb and Nord, yes, sir. We make no bones about that.

[fol. 654] Examination.

By Mr. Morris:

[fol. 655] Q. Mr. McGrath, now you say that this Cuyahoga County Bar Association case was filed in April?

A. I think so.

Q. And since April you have not been splitting any fees?

A. No. I said that about the time that that case was filed we agreed not to take any of that money, but hold it in abeyance until the thing was settled.

[fol. 656] Q. There is one I would like to call your attention to particularly. I am going to introduce all of them in evidence. The one from the Railroad Trainmen of January, 1931, with the heading "Legal Aid Bureau" this language appears: "It is the experience of the Legal Aid Bureau that before a member of the Brotherhood accepts compensation for personal injuries or signs any paper in connection therewith he should write to the Bureau for

some advice as to his legal rights. That's practicing law, isn't it?

A. I don't know. We claim it isn't. There is a lawsuit pending to determine that.

[fol. 657] Q: All right, sir. Before the Cuyahoga County Bar suit you gave opinions to the injured Brothers on the question of liability?

A. Yes, sir. I do yet in cases arising outside of Ohio and [fol. 658] in the State of Ohio in minor cases, in Ohio.

[fol. 659]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 18

IN THE COURT OF COMMON PLEAS

No. 354,975

April Term 1932

STATE OF OHIO)
) ss
CUYAHOGA COUNTY)

JACK B. DWORKEN

VS

Plaintiff

BROTHERHOOD OF RAILROAD TRAINMEN GRAND LODGE
Defendant

Be it remembered that heretofore, to-wit: At a term of the said Court of Common Pleas begun and held at the Court House, in the City of Cleveland, within and for the County of Cuyahoga, and the State of Ohio, on the Fourth day of April in the year of our Lord, One thousand nine hundred and thirty-two by and before their Honors, to-wit:

Samuel E. Kramer, George B. Harris, Thomas M. Kennedy, Harrison W. Ewing, Alvin J. Pearson, John P. Dempsey, Virgil J. Terrell, George P. Baer, Samuel H. Silbert, Alva R. Corlett, Lee E. Skeel, James B. Ruhl, Frederick P. Walther, Walter McMahon, Homer G. Powell, Judges of the Court of Common Pleas of the Eleventh Judicial District of the State of Ohio and the County of Cuyahoga:

Thomas C. Cook, Clerk of Courts. John M. Sulzmann, Sheriff

[fol. 660]

IN THE COURT OF COMMON PLEAS

No. 354975.

THE STATE OF OHIO)

) ss

CUYAHOGA COUNTY.)

JACK B. DWORKE,

Plaintiff,

—VS—

BROTHERHOOD OF RAILROAD TRAINMEN GRAND LODGE,

Defendant.

JOURNAL ENTRY.

May 4th 1932

This cause came on to be heard upon the pleadings and upon the statements of counsel for the respective parties, from which statements it appears that prior to the filing of the petition herein and until about December 1, 1931, the defendant maintained and operated a Legal Aid Department, with Attorney Tom J. McGrath, its general counsel, in charge of said Department, and that at the request of such members of the defendant, who claimed to be injured in railroad service, or at the request of dependents of such members who were killed in railroad service, the

defendant, through its Legal Aid Department, gave opinions to such members and dependents respecting their legal rights arising out of such injury or death, and in case litigation was required, referred such members or dependents to counsel with whom defendant had an arrangement whereby 5% of the amount recovered in such litigation was assigned by such claimant to the Legal Aid Department of the defendant, to defray in part the cost of maintaining said Department.

From said statements of counsel, it further appears that since December 1, 1931, the defendant has discontinued the former method of operating its Legal Aid Department, and has changed its methods of operation so that neither the defendant nor any of its agents or employes give any legal opinions to any member, nor to dependents of members of the defendant, respecting any alleged legal rights of such member or dependents; but that if a member of [fol. 661] the defendant, claiming to have been injured in the railroad service, or if a dependent of a member killed in the railroad service, requests a legal opinion respecting the rights of such person or persons arising out of such injury or death, such request will be referred to counsel of the choice of such member or dependent, with no responsibility on the part of the defendant for the character of the service rendered by such attorney, and without any division of fees between any attorney and the defendant, or any department of the defendant; and the services of the Legal Aid Department of the defendant, in its investigating of claims, are limited to investigation of facts without advice as to any legal rights, and the reports of such investigations are for the benefit of such member or dependents of members. The above words, "reports of such investigations" are understood by the parties and their counsel, not to mean or include the statements of witnesses received by the Legal Aid Department of the defendant in the course of its investigation.

Upon the representation by counsel for defendant, that said defendant has, in good faith, adopted said new plan

of operation, this action is, by consent of both parties, dismissed at the costs of the defendant.

May 4, 1932.

/s/ LEE E. SKEL
Judge.

Approved by:

/s/ JOSEPH S. STERN AND J. B. DWORKE
Joseph S. Stern and J. B. Dworken,
Attorneys for Plaintiff.

/s/ PERRY A. FREY and
P. A. Frey

/s/ BERNON, MULLIGAN, KEELEY & LE FEVER
Bernon, Mulligan, Keeley & Le Fever,
Attorneys for Defendant.

[fol. 662]

CERTIFICATE TO COMMON PLEAS RECORD

THE STATE OF OHIO,
CUYAHOGA COUNTY, S.S.

I, EMIL J. MASGAY, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing copy is taken and copied from the records Journal 267 page 951 Dated May 4th 1932 of the Proceedings of the Court of Common Pleas, within and for said Cuyahoga County, and that said foregoing copy has been compared by me, with the original record Journal 267 page 951—Dated May 4th 1932 and that the same is a correct transcript thereof.

[SEAL]

IN TESTIMONY WHEREOF, I do hereby subscribe my name officially and affix the seal of said Court at the Court House in the City of Cleveland, in said County, this 21st day of September A. D. 1961.

/s/ EMIL J. MASGAY
Clerk

I, SAMUEL H. SILBERT, Chief Justice of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify, that EMIL J. MASGAY was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas, within and for said Cuyahoga County, and State of Ohio, and that said Clerk is the officer in whose custody said original record Journal 267 page 951 Dated—May 4th 1932 is required to be kept by the Laws of the State of Ohio, and authorized by the Laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of Law.

Signed by me and dated at Cleveland, Cuyahoga County, Ohio, this 21st day of September A. D. 1961.

/s/ SAMUEL H. SILBERT
Judge, as aforesaid

I, EMIL J. MASGAY, Clerk of the Court of Common Pleas, a Court of Record of Cuyahoga County, do hereby certify that Samuel H. Silbert was at the date of the foregoing certificate the duly elected, qualified and acting Chief Justice of the Court of Common Pleas of Cuyahoga County.

[SEAL]

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at Cleveland, this 21st day of September A. D. 1961.

/s/ EMIL J. MASGAY
Clerk

[fol. 663]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 21

EXCERPTS FROM TRANSCRIPT OF EVIDENCE AND PROCEEDINGS IN
RESPONSE TO SUBSTANTIAL AFFIRMATIVE SHOWING RE-
QUIREMENT OF ORDER OF JUNE 3, 1946.

(July 22, 1946)

DISTRICT COURT OF THE UNITED STATES IN AND FOR THE
EASTERN DIVISION OF THE EASTERN JUDICIAL
DISTRICT OF MISSOURI

No. 3957

JAMES E. YOUNG, Plaintiff,

vs.

GULF, MOBILE & OHIO RAILROAD COMPANY,
a corporation, Defendant.

[fol. 664] WILLIAM H. DePARCQ, a witness of lawful age,
being duly produced, sworn and examined, testified in his
own behalf as Respondent, as follows:

Direct examination.

By Mr. Duggan:

Q. Will you please state your name?

[fol. 665] A. William H. DeParcq.

Q. Where do you reside?

A. Minneapolis, Minnesota.

Q. And your profession or occupation, please?

A. I am a lawyer.

[fol. 666] Q. Are you Regional Counsel for the Brotherhood of Railroad Trainmen?

A. Yes, sir.

Q. As Regional Counsel are you engaged in, or do you agree to split fees with the Brotherhood of Railroad Trainmen, or with any director, bureau, officer, agent or employee thereof?

A. No, sir.

Q. Have you any such agreement, indirectly or directly, in the Young case?

A. I do not.

Q. Do you propose hereafter to enter into such an agreement in the Young case?

A. No, sir.

Q. Or in any other case?

A. No, sir.

Q. At present are you a member of any firm, or are you practicing solely as an individual?

A. Since April 1st this year, I have been practicing solely as an individual and I have my individual practice; I do not have any partnership except I do have a limited arrangement with Tom Davis whereby he is interested in certain Brotherhood cases that I handle, that is; he is interested from the standpoint of a division of fees. But I maintain my office and pay my own overhead, handle all [fol. 667] of my own cases, and he has no interest whatever in my practice, but this Brotherhood appointment I obtained through him, the territory to which I am assigned is his territory and has been for a good many years, and because it was too much for him to handle, because he is getting older, I have taken over some of his territory and I do have a limited arrangement with him, and he is interested in the Young case.

Q. Mr. DePareq, I show you DePareq Exhibit 2, and ask you if you received that letter from Mr. Whitney.

A. I did.

Q. And in that letter he discusses this particular case?

A. That is correct.

Q. I show you DeParcq Exhibit 3 and ask you what that is, if you know, Mr. DeParcq.

[fol. 668] A. That is a bulletin that was sent to sixteen law firms in the United States, that constitute regional counsel, dated June 15, 1946, signed by A. F. Whitney, as President of the Brotherhood of Railroad Trainmen, advising all Regional Counsel that neither the Brotherhood of Railroad Trainmen, nor any department or bureau thereof, is financially interested in any case or cases now pending or to be filed by them in any court, against any common carrier, or others, and that no part of any fee received by such Regional Counsel is anticipated or will be accepted by the Brotherhood of Railroad Trainmen.

I might say that this bulletin was the culmination of a series of conferences and negotiations amongst the various law firms that constitute regional counsel, and having commenced months ago. In fact, before this Motion was filed in the Young case this movement was under way and it only culminated in this letter effective June 15, of this year.

Mr. Duggan: I should like to offer at this time DeParcq Exhibits 2 and 3.*

Mr. Ely: No objection.

* DeParcq Exhibits 2 and 3 are the same as Plaintiff's Exhibits 22 and 23.

DePARCQ EXHIBIT 2
7/22/46 MJC

BROTHERHOOD OF RAILROAD TRAINMEN

General Offices
Cleveland 13, Ohio.

June 15, 1946.

Mr. William H. DeParcq,
Regional Counsel,
Brotherhood of Railroad Trainmen,
Suite 1332, 33 N. LaSalle St.,
Chicago, Illinois.

[fol. 669]

Dear Mr. DeParcq:

It has come to my attention that in the District Court of the United States, Eastern Division, Eastern District of Missouri, charges were made that you have been engaged, directly or indirectly, in the practice of splitting your fees or compensation as counsel in certain cases founded upon the Federal Employers' Liability Act or the Safety Appliance Act, or both, with the Brotherhood of Railroad Trainmen, its officers, directors or employees.

Please be advised that neither the Brotherhood of Railroad Trainmen, nor any department or bureau thereof, is financially interested in any cases now pending or to be filed by you as regional counsel in the above-named, or any other, court, in Missouri, or any other state, and that no portion of your fees are expected or will be accepted by the Brotherhood of Railroad Trainmen.

Yours very truly,

(Signed) A. F. WHITNEY,
President.

DePAREQ EXHIBIT 3
7/22/46 MJC

BROTHERHOOD OF RAILROAD TRAINMEN

General Offices
Cleveland 13, Ohio.

June 15, 1946.

All Regional Counsel,
Brotherhood of Railroad Trainmen

Dear Sirs:

Please be advised that neither the Brotherhood of Railroad Trainmen, nor any department or bureau thereof, is financially interested in any case or cases now pending or to be filed by you in any court in any state against common carriers, or others, and that no part of any fee received by you is anticipated or will be accepted by the Brotherhood of Railroad Trainmen.

Yours very truly,

(Signed) A. F. WHITNEY,
President.

[fol. 670] Q. Mr. DePareq, do you have any agreement with the Brotherhood of Railroad Trainmen, any of its officers, directors, employees, or any member thereof, or do you have any agreement with any other person, or group of persons, to split fees in any litigation that you are handling, except such litigation as you may be handling with other lawyers who have a right to practice law?

A. I do not.

Q. I ask you the same question, and leave out the exception with respect to the lawyers: Do you have any agreement, direct or indirect, oral or written, to split fees with the Brotherhood of Railroad Trainmen, any officer, director, member or employee thereof, or any other person or group of persons or organizations?

A. I do not.

• • • • •

[fol. 671] Cross examination.

By Mr. Ely:

Q. I notice that DePareq Exhibit 2 and DePareq Exhibit 3 are both dated June 15, 1946; is that correct?

A. That is correct.

Q. Prior to that date, at the time this Motion was filed, did you have an arrangement whereby part of your fees went to the Legal Aid Bureau of the Brotherhood of Railroad Trainmen?

A. Well, I will read you what the arrangement was and then you can determine whether it consisted of splitting fees. Prior to the time these negotiations and conferences culminated in this new reorganization, effective June 15 of [this year, any Brotherhood cases handled by the firm of which I was a member, Mr. McDonald and Mr. Davis and myself, or, after its dissolution by myself, four per cent. of the gross amount recovered was sent to the Legal Aid Department of the Brotherhood of Railroad Trainmen. [fol. 672] Now, strictly and technically, that did not consist of four per cent. of the attorney's fee. In other words, it didn't vary with the attorney's fee. The attorney's fee might be more or less, depending upon the expenses and who paid them, or the attorney might waive his fee entirely. So, that the amount that went to—

The Court: Four per cent. of the recovery?

The Witness: Gross recovery in each and every Brotherhood case, and that was true no matter what the attorney's fee was, so that the payment was out of gross recovery.

Mr. Ely: Q. That was true until what date?

A. June 15, 1946.

Q. So, whether it was an arrangement to split fees or not, you did have a contract or understanding that four per cent. of any amount you might recover, gross amount you might recover in any case, either by suit or settlement, would go to the Legal Aid Bureau of the Brotherhood?

A. That is right.

Q. How was that paid to the Legal Aid Bureau?

A. The attorney would pay it himself.

Q. And that arrangement was brought to an end on the 15th of June of this year?

A. That is correct.

Q. What is the arrangement now which regional counsel have with the Brotherhood?

[fol. 673] A. The regional counsel do not pay anything. They keep the entire fee; or twenty-five per cent. of the recovery, and neither the attorneys nor the clients send one penny to the Brotherhood.

Q. Nor to any bureau?

A. That is correct.

Q. But you are still Regional counsel for the Brotherhood?

A. That is right.

Q. Do you receive any compensation from the Brotherhood?

A. No, sir.

Q. Did you read an article in the February, 1946, Journal of the American Judicature Society, entitled "Interstate Commerce in Damage Suits"?

A. Yes.

[fol. 674] Q. It referred to the Ryan case, I believe?

A. Well, I wouldn't say.

Q. On page 138 of that copy of the Journal of the American Judicature Society—the article starts on page 135, "Interstate Commerce in Damage Suits", and then under the heading "Legal Aid Department", starting on page 138 of that article, it says:

"A great many of these cases, although not all of them by any means, are traceable to the activities of the so-called 'legal aid departments' of certain of the railroad employee labor unions or brotherhoods. These departments, established chiefly for the purpose of assisting their members in prosecuting their claims for personal injuries, have selected certain lawyers and law firms in various cities and designated them 'regional counsel'. Their names are kept before the members in one way or another, and they get most of the members' business".

You remember reading that article?

A. I read the article.

Q. How is your name kept before the members as regional counsel of the Railroad Brotherhood?

A. Well, it is published in the Brotherhood magazine that comes out quarterly, and on the second page from the end of that magazine you will find a heading, "Regional [fol. 675] Counsel" and then with their names and addresses after that. Sixteen, eighteen or twenty law firms all over the United States are listed there with their addresses. You will find my name there.

Q. Does your name go to members of the Brotherhood in any other way, through any individual solicitation, I mean, of different persons, who solicit cases and death claims in various parts of the United States?

A. No; I wouldn't call it solicitation.

Q. What would you call it?

A. I would say that if a member desires the services of the Legal Aid Department he is notified of the name and address of the regional attorney in the territory where he is located.

Q. How is the member first contacted?

A. Usually, by the Regional Investigator who was appointed by President Whitney, and he, himself, must be a member of the Brotherhood, and he is nearly always a railroad man.

Q. What is your arrangement with Tom Davis?

[fol. 676] A. Tom Davis receives fifteen per cent of my net fee in any Brotherhood case coming from the territory that I now handle, that was formerly in his territory. In other words, I am servicing, so to speak, a part of his territory and with his co-operation and his assistance, and split fees with him and he gets fifteen per cent of my net fee.

Q. Does he receive a guaranty?

A. No. There was such a proposition originally, but it never was effective.

Q. The proposition was to pay him twenty-five hundred dollars a month?

A. No.

Q. How much was it?

A. About fifteen hundred; he never got it.

[fol. 677] Q. Why did the Legal Aid Department do away with that and decide not to take the four per cent?

A. Well, they were under constant criticism by railroad companies and lawyers.

Q. And courts?

A. On one occasion, that I know of.

[fol. 678] Q. What?

A. The O'Neill case.

Q. And what other case?

A. Rowe.

Q. How about the American Judicature Society?

The Court: How about what?

Mr. Ely: American Judicature Society.

Q. You were under criticism by them?

A. Various bar committees and articles that were written like the ones you referred to have criticized that arrangement. However, some years or so ago, as I recall it, Mr. Hensley was before the Chicago Bar Association on various railroad companies' and lawyers' complaints, and initiated some kind of proceeding. He is Regional Counsel for the Brotherhood in various eastern States, and is the only other regional counsel in Chicago, except myself, and his entire office, as I recall, was investigated by the Chicago Bar Association. His arrangement with the Brotherhood is very similar to my own, and he was required to make a few changes in stationery, here and there, and, as far as I understand, the proceeding was dismissed.

[fol. 679] Mr. Ely: Mr. DeParcq, before noon Mr. Dugan handed me these Rules and Regulations Governing Relations of Regional Counsel and the Brotherhood of Railroad Trainmen. I believe the statement was made that we might offer them in evidence if we so desire.

I will just read it, but I haven't read it thoroughly myself. It is only two pages long.

(Reading) "RULES AND REGULATIONS GOVERNING RELATIONS OF REGIONAL COUNSEL AND THE BROTHERHOOD OF RAILROAD TRAINMEN"

"Lawyers will be selected in various railroad centers of the United States with a view to rendering the service contemplated with the greatest degree of efficiency, keeping in mind the convenience of members and total membership in a given district.

"Members who are injured or the dependents of members who are killed in the course of their employment, may write or call on the Legal Aid Department of the Brotherhood for assistance, or may request such assistance through the officers of the local lodge. They will be requested to furnish, as nearly as possible, a full and complete statement of all the facts surrounding the accidental death or injury. This will include written statements of witnesses, if possible. Injured members will also be asked, to furnish statements from medical examiners where there is any question as to the nature and extent of the disability. [fol. 680] "In injury or death cases upon request of the injured member or dependents of a deceased member, and where circumstances seem to warrant it, an investigation will be made by regional counsel or authorized investigators representing the Legal Aid Department, to ascertain the facts surrounding the accident or death.

"It shall be the duty of regional counsel, when requested to do so, to advise injured members or the dependents of deceased members, with a view to enabling them to effect a fair settlement. It is expected that regional counsel will urge an amicable settlement in all cases where a reasonable offer has been made by the railroad company. The Brotherhood will insist that regional counsel in such cases will furnish advice solely with a view to promoting the best interests of the members or their dependents. Any over-reaching on the part of regional counsel intended to induce members or their dependents to sign contracts of employment will be discountenanced.

"Although the Brotherhood, upon request, will make investigations for the purpose of assisting its members, we will not countenance any members being solicited or coerced into signing a contract of employment, and any investigators or representative who [fol. 681] attempts so to do will distinctly understand that he is violating our rules and will be dealt with accordingly in the event such charge is substantiated.

"It is anticipated that members and dependents may go direct to regional counsel for information and advice, and all such cases will be handled by regional counsel in the same manner as if referred to them by the Legal Aid Department of the Brotherhood.

"Although the membership will be advised of the names and addresses of regional counsel for their particular territory, each member or dependent will be privileged to consult with or employ any counsel they desire.

"The Brotherhood and its employees shall not undertake to furnish members of the Brotherhood, or their dependents, with any advice or information as to their legal rights. It is to be distinctly understood that all legal opinions, or matters pertaining to the practice of law, shall be obtained through duly licensed lawyers, and that no layman shall be permitted to infringe in any manner upon the rights or privileges of practicing attorneys.

"In cases where members have exhausted their own efforts in attempts to procure settlement and ask for advice as to the next step they should take, they may be [fol. 682] referred to regional counsel, with whom contracts may be made for the prosecution of their claim. It must be understood that the Brotherhood cannot and will not undertake to advise or control the actions of members in this regard, and that they will remain free to employ any attorneys they desire. Where members or their dependents see fit to employ regional counsel, such counsel shall enter into a contract with the claimant calling for the payment of a contingent fee of not more than twenty-five per

cent. (25%) of the net amount recovered in suit or settlement. Where no contract for the services of regional counsel has been signed, no fees can be expected or requested of claimants.

"It will be understood that members will have control of their cases in the hands of regional counsel and that no settlement of any case can be made without the consent of the client.

"Regional counsel will be required to report to the Legal Aid Department all cases in which a contract has been entered into with members of the Brotherhood or their dependents as a result of personal injury sustained in the course of their employment, setting forth a statement of the facts involved and when settlement has been consummated, a full report and statement covering amount of settlement and [fol. 683] distribution."

I believe that is the end of it, and then there are spaces for acceptance, is that right?

A. Correct.

Q. Mr. DeParcq, when were these rules and regulations promulgated to you, when did you first become acquainted with them?

A. The first time I ever heard of them was perhaps a little more than a year ago.

Q. There is nothing in this document that I have read that refers to the payment of four per cent. of any amount recovered, to the Brotherhood?

A. That is correct.

Q. Was there any written contract between the regional counsel and the Legal Aid Department of the Brotherhood providing for payment of that four per cent.?

A. Not in my case.

Q. That was merely an understanding?

A. That is correct, an oral agreement.

Q. But there is here a provision requiring you, and all regional counsel, to report to the Legal Aid Department all cases in which a contract has been entered into with members of the Brotherhood?

A. That is correct.

Q. Another requirement is that when settlement has been consummated a full report and statement covering the [fol. 684] amount of settlement and distribution shall be made to the Legal Aid Department?

A. That is in the rules. They keep statistics on that.

Q. Do you know how much you have paid the Legal Aid Department of the Brotherhood, or approximately how much you have paid them on any four per cent. payment that you have made?

A. Individually, nothing. Since April 1, 1946, I have paid absolutely nothing to the Brotherhood.

[fol. 685]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 24

IN THE SUPERIOR COURT
STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

STATE OF NORTH CAROLINA ex rel. W. K. McLEAN, as
Solicitor of the Nineteenth Judicial District,
Plaintiff,

vs.

C. O. HICE, JOSEPH B. MCGLYNN, J. V. ROBERTS, W. D. MILLS
and Other Persons, Associations or Corporations Whose
Names Are at Present Unknown,

Defendants.

JUDGMENT

[fol. 686] NOW, THEREFORE, upon the foregoing and upon the pleadings and motions in this cause, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

3. That in accordance with the prayer of the complaint, and in accordance with the facts set forth in the complaint, said facts having been admitted by failure to file answer [fol. 687] or offer answer, and having therefore been found to be true and correct by this Court, the defendants herein are hereby permanently enjoined as follows:

(A) That the defendants, C. O. Hice, Joseph B. McGlynn, J. V. Roberts and W. D. Mills, their agents, representatives and employees, be and they are hereby permanently enjoined and restrained from advising with and giving opinions in North Carolina, upon the legal rights of any person, firm or corporation, and

(B) That they and each of them be further permanently enjoined and restrained, by word, sign, letter or advertisement, from holding out (in North Carolina), Joseph B. McGlynn, or any other attorney, not authorized to practice law in the State of North Carolina, as competent or qualified to give legal advice or counsel to any person, firm or corporation, and

(C) Said named parties defendant, their agents, representatives and employees, are further permanently enjoined and restrained from soliciting or procuring, through solicitation, or attempting to solicit, or to attempt to procure through solicitation, either directly or indirectly, any legal business, whether to be performed in this State, or elsewhere, by themselves, or by the defendant Joseph B. McGlynn, or by any person located anywhere; and

(D) Said named parties defendant, their agents, representatives and employees be and they are further permanently enjoined and restrained from furnishing or agreeing to furnish, or promising to furnish transportation to any person to any point in or out of North Carolina, for the purpose of conferring with the defendant, Joseph B. McGlynn, or any other attorney.

This 12th day of May, 1948.

/s/ H. HOYLE SINK
Judge Presiding

[fol. 688]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 28

IN THE SUPREME COURT OF NEBRASKA

Original 34257

THE STATE OF NEBRASKA, ex rel. CLARENCE S. BECK,
Attorney General,

Plaintiff,

vs.

PHILIP B. LUSH, GAIL A. CLINKENBEARD; GRAND LODGE
BROTHERHOOD OF RAILROAD TRAINMEN; SUBORDINATE
LODGE 853 AT FALLS CITY, NEBRASKA; SUBORDINATE LODGE
400 AT FAIRBURY, NEBRASKA; SUBORDINATE LODGE 190 AT
CHADRON, NEBRASKA; SUBORDINATE LODGE 170 AT LINCOLN,
NEBRASKA; SUBORDINATE LODGE 134 AT GRAND ISLAND,
NEBRASKA; R. J. GROVES; F. A. ARNOLD; W. G. GRIFFIN;
D. G. KLEIN; and W. STULL,

Defendants.

CONSENT DECREE

NOW on this 6th day of May, 1969, this matter came on to be heard before this Court, the plaintiff appearing by its attorneys, John S. Samson and Robert A. Nelson, Special Assistant Attorneys General, the defendants, Grand Lodge Brotherhood of Railroad Trainmen, Subordinate Lodge No. 134, Grand Island, Nebraska; Subordinate Lodge No. 170, Lincoln, Nebraska; Subordinate Lodge No. 190, Chadron, Nebraska; Subordinate Lodge No. 400, Fairbury, Nebraska; Subordinate Lodge No. 853, Falls City, Nebraska, Gail A. Clinkenbeard, R. J. Groves, F. A. Arnold, W. G. Griffin, D. G. Klein and W. Stull appearing by their attorneys, Crosy, Pansing, Guenzel & Binning, and the defendant, Philip B. Lush, appearing by his attorney, Chauncey E. Barney, the recommendations and findings

of the Referee being before this Court, and the Court, being fully advised in the premises, finds as follows:

[fol. 689] (1) That the parties hereto have entered into a written stipulation filed herein, the same has been recommended by the Referee for approval by this Court, which stipulation and recommendation of the Referee are by this reference made a part hereof.

(2) That in the year 1930, the Brotherhood of Railroad Trainmen hereinafter referred to as the Brotherhood, established a Department designated as "Legal Aid Department"; that the "Legal Aid Department" of the Brotherhood of Railroad Trainmen maintains a central office in Cleveland, Ohio, at the National Headquarters of the Brotherhood.

(3) That the Brotherhood of Railroad Trainmen by and through its President, at all times mentioned in the Amended Information, had designated 16 regions in the United States and had designated regional counsel therein for the Brotherhood of Railroad Trainmen; that at all times mentioned in the Amended Information filed herein, prior to January 1, 1956, Philip B. Lush was a member of Davis, Rerat, Yeager and Lush, a law firm, and was, as an individual, a regional counsel of said Brotherhood under said Legal Aid Plan, and, after January 1, 1956, was and now is a member of the law firm of Davis and Lush of Minneapolis, Minnesota, and as an individual, was Regional Counsel of said Brotherhood under said plan, for a region which included the State of Nebraska.

(4) That at all times mentioned in the Amended Information herein the Cleveland Office of the Legal Aid Department served as a clearing house which received reports from all Brotherhood Lodges of instances in which members had been injured or killed in railroad accidents; that, generally each region had assigned to it a person or persons [fol. 690] designated as "Regional Investigators" who were charged generally with the duty of calling on said injured workman or the widow or heirs at law of a workman who was killed as the result of a railroad accident; and that at all times mentioned therein, the defendant,

Gail A. Clinkenbeard, was a regional investigator for the region which included the State of Nebraska.

(5) That at all times mentioned in the Amended Information filed herein each subordinate lodge of the Brotherhood of Railroad Trainmen had one or more designated persons whose duty it was to report to the Cleveland Office, as aforementioned, and to aid the regional investigator in contacting such injured workman or the widow or heirs at law of a workman who had been killed in a railroad accident; and that the defendants, R. J. Groves, F. A. Arnold, W. G. Griffin, D. G. Kline and W. Stull acted in such capacity,

(6) That in contacting such injured workman or the widow or heirs at law of a workman who had been killed, said Gail A. Clinkenbeard and the local representatives of the lodges herein named as defendants, in some instances, solicited the employment of the Regional Counsel for the purpose of collecting damages against the railroad companies involved; that, in some instances, the said Gail A. Clinkenbeard displayed newspaper clippings and photostatic copies of checks showing large settlements or judgments secured by such regional counsel in previous cases, which were displayed to the prospective clients as an inducement to enter into contracts of employment with such regional counsel; that, in some instances, as an added inducement to secure such contracts of employment, promises were made that the regional counsel would advance the necessary sums for medical examinations, all Court [fol. 691] costs and other expenses of litigation and would advance funds for living expenses while the action was pending. That, in some instances, as a result of the said conduct on the part of the said Gail A. Clinkenbeard and the local representatives designated herein as defendants, contracts were secured with such prospective clients whereby the regional counsel was employed to represent them in their claims against the railroad companies; and such regional counsel did, in some instances, advance funds for medical examinations, court costs and other expenses of litigation and, in some instances, did advance

funds for living expenses of the client while said action was pending.

(8) That the persons so contacted represented both members and non-members of the Brotherhood of Railroad Trainmen and that the contract for attorneys fees where the client was a member of the Brotherhood generally provided for payment of a contingent attorneys fee in the amount of 25 per cent of the amount recovered and in the case of non-members for a fee of 33 $\frac{1}{3}$ per cent of the amount recovered.

(9) That the defendant, Gail A. Clinkenbeard, was paid for his services as regional investigator on the basis of 10 per cent of the attorneys fee collected by regional counsel on each case where he had made the contact and investigation after the deduction of 25 per cent from such fee as a general overhead expense, and in cases involving non-members, his compensation was 15 per cent of the amount of attorneys fee, less a deduction of 25 per cent for general overhead expense; that the other defendants named in Paragraph (5) herein were sometimes paid by regional counsel for services rendered, which payments, if any, varied in amount.

[fol. 692] (10) That all salaries, commissions and compensation paid to the defendant, Gail A. Clinkenbeard, and all payments to the defendants named in Paragraph (5) herein who received payments as stated in Paragraph (9) were paid by the regional counsel either directly, or indirectly by having such sums channeled through the office of the Legal Aid Department; and that the general expenses of operating the Legal Aid Department were paid by all regional counsel, each counsel being assessed his proportionate share of the total costs of the operation of the Department at the end of each year, in the ratio that their respective gross recoveries bore to the total gross recoveries throughout the country.

(11) That the defendants herein, and each of them, have represented that they have discontinued the improper practices hereinbefore set forth and that, therefore, the plaintiff, C. S. Beck as Attorney General of the State of

Nebraska, has withdrawn his motion for citation for contempt as a part of the stipulation filed herein as to all defendants and the same should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

(1) That motion for citation for contempt be and the same is hereby dismissed as to each defendant.

(2) That in the procurement of a case within the State of Nebraska the defendants, Grand Lodge Brotherhood of Railroad Trainmen, Subordinate Lodge No. 134, Grand Island, Nebraska; Subordinate Lodge No. 170, Lincoln, Nebraska; Subordinate Lodge No. 190, Chadron, Nebraska; Subordinate Lodge No. 400, Fairbury, Nebraska; Subordinate Lodge No. 853, Falls City, Nebraska, Gail A. [fol. 693] Clinkenbeard, R. J. Groves, F. A. Arnold, W. G. Griffin, D. G. Klein and W. Stull and all persons acting by, through and under them or either of them are hereby jointly and severally permanently enjoined and restrained from:

a. Telling any person or his representatives that said person has a cause of action, the amount he is entitled to recover, where suit should be filed, or doing any other act or thing which constitutes the practice of law within the State of Nebraska;

b. Negotiating or attempting to negotiate contracts of employment for legal services on behalf of any lawyer or lawyers;

c. Accepting pay or any gratuity or benefit whatsoever, directly or indirectly, from any lawyer, person or organization for services in obtaining contracts of employment for legal services;

d. Loaning or advancing or promising to loan or advance money to any person or his representative pending trial or settlement of his claim or suit either personally or for or on behalf of any other person;

e. Displaying, exhibiting, or showing copies or photographs of checks, releases, newspaper accounts

or other data concerning settlement made on behalf of other claimants for the purpose of inducing any person, or his representatives, or which may tend to induce said person, to enter into contracts for the legal services of any lawyer;

[fol. 694] f. In any way or any manner in concert with any resident or nonresident lawyer conspire to violate the laws of Nebraska or the Canons of Legal Ethics imposed by the Courts on lawyers licensed to practice law in the State of Nebraska.

g. In any way or in any manner violate or aid or abet the violation of the provisions of Paragraph (2) of this decree.

(3) That in the procurement of a case within the State of Nebraska the defendant, Philip B. Lush as an individual and as a lawyer admitted to the practice of law within the State of Minnesota, and all persons acting by, through or under him, in any way or in any manner, either personally or by or through an agent, servant, employee, partner, or associate is hereby jointly and severally enjoined and restrained from:

a. Improperly and illegally soliciting employment as a lawyer in the State of Nebraska;

b. Paying any person, either directly or indirectly, for services rendered in obtaining or soliciting such contracts of employment within the State of Nebraska, or accepting any such employment or any benefit derived from any such solicitation;

c. Promising to loan or advance, or loaning or advancing, money to any person or persons at any time for the purpose of inducing said person or persons to employ said defendant, either jointly or severally;

[fol. 695] d. Making unsolicited calls on any person for the purpose of soliciting contracts of employment;

e. Violating the laws of Nebraska concerning the practice of law within the State of Nebraska or Canons

of Legal Ethics imposed by the Supreme Court of Nebraska, required of and observed by resident lawyers licensed in the State of Nebraska;

f. In any way or in any manner violate or aid and abet the violation of the provisions of Paragraph (2) of this decree.

(4) That costs in the amount of \$..... are hereby taxed to the defendants.

By THE COURT:

Frank W. Messmore
Judge of the Supreme Court of
Nebraska.

The foregoing CONSENT DECREE approved as to content and form.

The State of Nebraska

By C. S. Beck, Attorney General

By /s/ ROBERT A. NELSON
Robert A. Nelson
Special Assistant Attorney
General

By JOHN S. SAMSON
John S. Samson
Special Assistant Attorney
General

[fol. 696]

Gail A. Clinkenbeard; Grand Lodge
Brotherhood of Railroad Train-
men; Subordinate Lodge 853 at
Falls City, Nebraska; Subordinate
Lodge 400 at Fairbury, Nebraska;
Subordinate Lodge 190 at Chadron,
Nebraska; Subordinate Lodge 170
at Lincoln, Nebraska; Subordinate
Lodge 134 at Grand Island, Ne-
braska, R. J. Groves; F. A. Arnold;
W. G. Griffin; D. G. Klein; and W.
Stull

By CROSBY, PANSING, GUENZEL &
BINNING
Their Attorneys

By /s/ ROBERT B. CROSBY
Robert B. Crosby
One of said Attorneys

Philip B. Lush

By /s/ CHAUNCEY E. BARNEY
Chauncey E. Barney, His Attorney

[fol. 697]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 28A

34257

Filed May 6, 1960.

STATE ex rel. BECK

v.

LUSH

[fol. 698]

Opinion

Heard before Messmore, Yeager, Chappell, Wenke, and
Boslaugh, JJ.

YEAGER, J.

[fol. 699] "IT IS THEREFORE ORDERED, ADJUDGED AND
DECREED:

"(1) That motion for citation for contempt be and the
same is hereby dismissed as to each defendant.

"(2) That in the procurement of a case within the State
of Nebraska the defendants, Grand Lodge Brotherhood of
Railroad Trainmen, Subordinate Lodge No. 134, Grand
Island, Nebraska; Subordinate Lodge No. 170, Lincoln,
Nebraska; Subordinate Lodge No. 190, Chadron, Nebraska;
Subordinate Lodge No. 400, Fairbury, Nebraska; Subor-

dinate Lodge No. 853, Falls City, Nebraska, Gail A. Clinkenbeard, R. J. Groves, F. A. Arnold, W. G. Griffin, D. G. Klein and W. Stull and all persons acting by, through and under them or either of them are hereby jointly and severally permanently enjoined and restrained from:

[fol. 700] "a. Telling any person or his representatives that said person has a cause of action, the amount he is entitled to recover, where suit should be filed, or doing any other act or thing which constitutes the practice of law within the State of Nebraska;

"b. Negotiating or attempting to negotiate contracts of employment for legal services on behalf of any lawyer or lawyers;

"c. Accepting pay or any gratuity or benefit whatsoever, directly or indirectly, from any lawyer, person or organization for services in obtaining contracts of employment for legal services;

"d. Loaning or advancing or promising to loan or advance money to any person or his representative pending trial or settlement of his claim or suit either personally or for or on behalf of any other person;

"e. Displaying, exhibiting, or showing copies or photographs of checks, releases, newspaper accounts or other data concerning settlement made on behalf of other claimants for the purpose of inducing any person, or his representatives, or which may tend to induce said person, to enter into contracts for the legal services of any lawyer;

"f. In any way or any manner in concert with any resident or nonresident lawyer conspire to violate the laws of Nebraska or the Canons of Legal Ethics imposed by the [fol. 701] Courts on lawyers licensed to practice law in the State of Nebraska.

"g. In any way or in any manner violate or aid or abet the violation of the provisions of Paragraph (2) of this decree.

"(3) That in the procurement of a case within the State of Nebraska the defendant, Philip B. Lush as an individual and as a lawyer admitted to the practice of law within the State of Minnesota, and all persons acting by, through or under him, in any way or in any manner, either personally or by or through an agent, servant, employee, partner, or associate is hereby jointly and severally enjoined and restrained from:

"a. Improperly and illegally soliciting employment as a lawyer in the State of Nebraska;

"b. Paying any person, either directly or indirectly, for services rendered in obtaining or soliciting such contracts of employment within the State of Nebraska, or accepting any such employment or any benefit derived from any such solicitation;

"c. Promising to loan or advance, or loaning or advancing, money to any person or persons at any time for the purpose of inducing said person or persons to employ said defendant, either jointly or severally;

"d. Making unsolicited calls on any person for the purpose of soliciting contracts of employment;

"e. Violating the laws of Nebraska concerning the practice of law within the State of Nebraska or Canons of Legal Ethics imposed by the Supreme Court of Nebraska, required of and observed by resident lawyers licensed in the State of Nebraska;

"f. In any way or any manner violate or aid and abet the violation of the provisions of Paragraph (2) of this decree."

It becomes apparent from an examination of the pleadings, the stipulation, and the proposed decree that if the decree is entered that all of the purposes of the action will have been accomplished except that portion relating to the matter of contempt on or before May 10, 1957.

This abandonment by the plaintiff of the effort to hold the defendants for alleged acts committed before May 10, 1957, in view of the injunctive provisions of the decree, if

rendered, and the effect thereof, it is thought, should not militate against the rendition of the decree on the basis of the stipulation.

Section 25-1072, R. R. S. 1943, provides in part: "An injunction granted by a judge may be enforced as the act of the court. Disobedience of an injunction may be punished as a contempt by the court, or by any judge who might have granted it in vacation."

In interpretation and application of this statutory provision this court has said: "The first point raised is that, as she was not made a party to the injunction proceedings, she is not bound by the orders therein. We cannot sustain her [fol. 703] in this, as it has too frequently been held that one who has knowledge of an injunction and is in privity with the party enjoined is bound thereby." *Wilcox v. Ashford*, 131 Neb. 338, 268 N. W. 81.

It is therefore the opinion of this court that the proposed decree presented with the stipulation of the parties should be and it is hereby approved and it shall be considered as rendered and entered by this court on being signed by one of the members of the court.

CONSENT DECREE APPROVED

[fol. 704]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 29

Filed
In Supreme Court
of Oklahoma
May 2, 1960
Andy Payne, Clerk

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

No. 38373

State of Oklahoma, ex rel.,
Oklahoma Bar Association,

Petitioner,

vs.

Brotherhood of Railroad Trainmen, an International Rail-
road Union; W. P. Kennedy; C. R. Maher; Payne Rat-
ner, Sr.; Payne Ratner, Jr.; J. W. Harvey; Roy
Cramer; J. W. Wilkerson; J. E. Wilkinson; W. I. God-
dard and George King,

Respondents.

DECREE

[fol. 705] The Court having announced ready to pro-
ceed with the hearing of this matter as it pertains to
defendants, Brotherhood of Railroad Trainmen, an Inter-
national Railroad Union, W. P. Kennedy, C. R. Maher, J. W.
Harvey, Roy Cramer, J. W. Wilkerson, J. E. Wilkinson,
W. I. Goddard and George King, counsel for said defen-
dants and counsel for the Bar Association, in open court
announced to the Court that they had entered into an
agreement and stipulation for the entry of a Consent
Decree by this Court granting the relief prayed for in the
Petition For Injunction.

The Court, pursuant to said stipulation, enters the fol-
lowing finding and decree:

[fol. 706]

I.

The Petitioner herein, Oklahoma Bar Association, is an association duly and legally created by law, and authorized to prosecute this action.

II.

The respondent Brotherhood of Railroad Trainmen, is an international, unincorporated voluntary association, with its headquarters and place of business at Cleveland, Ohio, but doing business in Oklahoma through its subordinate lodges in various communities within this State.

III.

The respondents W. P. Kennedy and C. B. Maher are officers of the Brotherhood of Railroad Trainmen, the respondent Kennedy being the president thereof, and the respondent Maher being the Chief Clerk of the Legal Aid Department of said international Union.

IV.

The respondents J. W. Harvey, Roy Cramer, J. W. Wilkerson, J. E. Wilkinson, W. I. Geddard and George King are members of Local Lodges of said Brotherhood located within the State of Oklahoma and the State of Kansas.

[fol. 707]

V.

At all times material hereto, none of the respondents above named has been licensed or authorized to practice law in the State of Oklahoma.

VI.

The parties stipulate and agree that this Court has full and complete jurisdiction of the parties hereto and of the subject matter herein involved.

VII.

Prior to the time this controversy arose the respondent Brotherhood of Railroad Trainmen caused to be filed in

the Supreme Court of the State of Illinois a proceeding asking for a declaratory judgment defining the rights, duties and obligations of said respondent, Brotherhood of Railroad Trainmen, and its regional counsel, which proceeding resulted in the rendition of an opinion of the Supreme Court of the State of Illinois, being styled and numbered as follows:

"In re Brotherhood of Railroad Trainmen,
150 N. E. 2nd 168."

The opinion of the Supreme Court of Illinois is referred to and made a part of this decree as though fully set out herein.

[fol. 708] IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the respondents, Brotherhood of Railroad Trainmen, W. P. Kennedy, C. R. Maher, J. W. Harvey, Roy Cramer, J. W. Wilkerson, W. I. Goddard and George King, their agents, servants and employees be and the same are hereby perpetually enjoined from soliciting in the State of Oklahoma, any personal injury or death claim, for or on behalf of any person, or on behalf of any attorney.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the respondent, Brotherhood of Railroad Trainmen, its officers, agents, servants and employees, are permanently enjoined from representing, or attempting to represent any person in any legal matter or proceeding whatsoever in the State of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the respondents, and each of them are permanently enjoined and restrained from engaging in any activity, conduct or endeavor, condemned by the Supreme Court of Illinois in the Opinion above referred to.

[fol. 709] IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the respondents, and each of them, are permanently restrained and enjoined from engaging in the practice of law in any manner whatsoever in the State of Oklahoma. Done in open Court this 26th day of April, 1960.

DENVER N. DAVISON, Chief Justice.

The undersigned counsel of record for the respective parties hereto have consented and agreed in open court, that the court enter the above judgment and decree.

OKLAHOMA BAR ASSOCIATION,

By **HARRY G. FOREMAN**
Harry G. Foreman

HARDIN BALLARD,
Hardin Ballard
Attorneys for Petitioner.

Brotherhood of Railroad Trainmen
W. P. Kennedy, C. R. Maher, J. W. Harvey,
Roy Cramer, J. W. Wilkerson, J. E. Wilkinson,
W. I. Goddard and George King.

By **O. A. CARGILL**
O. A. Cargill
M. A. "Ned" Looney
M. A. Ned Looney.

I, Andy Payne, Clerk of the Supreme Court of the State of Oklahoma do hereby certify that the above and foregoing is a full, true and complete copy of the Decree filed May 2, 1960 in the above entitled cause, as the same remains on file in my office.

In Witness Whereof I hereunto set my hand and affix the Seal of said Court, at Oklahoma City, this 29 day of September 1961.

Andy Payne, Clerk
/s/ ANDY PAYNE

I hereby certify that the signature in above certification is the true signature of Andy Payne, Clerk of Supreme Court of the State of Oklahoma.

/s/ FLOYD L. JACKSON
Justice of Supreme Court of
the State of Oklahoma.

I hereby certify that the signature of Justice Floyd L. Jackson is the true signature of Justice F. L. Jackson of the Supreme Court of the State of Oklahoma.

/s/ ANDY PAYNE
Andy Payne, Clerk.

[Seal, Supreme Court, State of Oklahoma]

[fol. 710]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 30

IN THE SUPREME COURT OF MISSOURI
EN BANC

No. 47293

FRED B. HULSE, JAMES M. REEVES, FORREST M. HEMKER,
CLYDE J. LINDE and C. WALLACE WALTER, members of
the Advisory Committee,

Informants,

VS.

BROTHERHOOD OF RAILROAD TRAINMEN, an International
Railroad Labor Union, and W. P. KENNEDY, C. R.
MAHER, PHILLIP B. LUSH, DAN MCGLYNN, W. A. WOOD-
SON, E. G. GUNN, FRANK ZAMARIONI and G. A. McNURLAN,
individually and as class representatives of all of
the members of Brotherhood of Railroad Trainmen,
Respondents.

CONSENT DECREE

Now on this 14th day of November, 1960, this matter came on to be heard before this Court, the informants appearing by their attorneys, Roberts P. Elam and George S. Hecker, the respondents, Brotherhood of Railroad Trainmen, W. P. Kennedy, W. A. Woodson, E. G. Gunn and Dan McGlynn and Frank Zamarioni appearing by their attorney, Daniel P. Reardon, the respondents Phillip B. Lush and G. A. McNurlan appearing by their attorneys, Lyman Field and Clay C. Rogers, and the respondent, C. R. Maher, having never been served with process, not appearing, the report of the Special Commissioner heretofore appointed by this Court being before this Court, and the Court, being fully advised in the premises, finds as follows:

[fol. 711] 1. The parties hereto have entered into a written stipulation filed herein, which stipulation and the

report of the Special Commissioner are by this reference made a part hereof.

2. The respondent, Brotherhood of Railroad Trainmen (hereinafter sometimes referred to as the "Brotherhood"), is a railway labor union, having in excess of 200,000 members, the great majority of whom are employed as railroad trainmen. It is governed by a body known as the "Grand Lodge of the Brotherhood of Railroad Trainmen," and it conducts its business functions and operations through subordinate lodges, sometimes referred to as "local lodges," located in the various states of the Union, some 35 of which are located in the State of Missouri.

3. In 1930, the Brotherhood established a "Legal Aid Department" by order of its then president, following a referendum ballot of its local lodges, which was explained in Special Circular No. W-28 from the office of the then president of the Brotherhood, A. F. Whitney under date of April 15, 1930, as follows:

"The establishment of the bureau, as well as the making of agreements with regional attorneys throughout the United States, will be consummated as soon as consistently possible, and notice of its establishment will be printed in the 'Railroad Trainman' for the information and guidance of all members.

"Briefly, the plan contemplates the establishment at Grand Lodge headquarters of a bureau, with the necessary legal and clerical assistance, to advise injured members, and the dependents of those who may be killed, as to their rights respecting claims for damage. This assistance will not only be given to [fol. 712] injured members, and the dependents of those killed, but also to proper subordinate lodge officers and committeemen, for the purpose of assisting injured members, or dependents, in negotiating settlements. No fee or charge will be made to the members for this advice.

"In order to secure advice it will be necessary to furnish the bureau with a full statement of facts surrounding the injury or death, so that questions of

liability may be determined. In injury cases not involving the loss of limbs or other specific injuries, it will be necessary to furnish medical statements clearly describing the character and extent of the injury. In cases where investigations must necessarily be made before passing upon the question of liability, which instances are more likely to occur with reference to death cases, the Legal Aid Bureau will undertake to make the necessary investigations, calling to its assistance officers of subordinate lodges and committeemen. It is hoped a full measure of cooperation will be given by these members.

"Because of the great volume of minor injuries occurring to members of the Brotherhood employed on railroads of the country, it will be impossible to give assistance or advice in cases of minor injuries where employees are able to return to work in a comparatively short time. It is felt that, at the outset at least, the bureau should not be requested to give information to employees who can return to work within ninety days. This attitude is taken not only because of the extremely increased burden of work which would be thrust upon the Legal Aid Bureau incident to answering inquiries relative to minor injuries, but by the further fact that it is invariably to the best interest of a railroad employee, receiving a minor injury, to return to work, thereby preserving seniority rights with his employer.

"In the minor injury cases railroads usually pay for time lost and it is felt it is better in all cases to accept such settlements than to employ lawyers. It is equally true that as time goes on, the committeemen will be familiarized with the rights of members under the law and will probably be able to assist injured members in negotiating adjustments of minor claims with reasonably satisfactory results.

[fol. 713] "In all cases where the disability is not permanent and the member is able to return to his employment, it is the belief of the undersigned that every

effort should be made to bring about amicable settlements with the railroad company. It is almost the uniform practice of the railroads of the United States to discharge an employee for employing a lawyer. It is also the practice of most railroads to refuse employment to applicants who have previously brought suit against another railroad. Age restrictions subscribed to and followed by most railroads militate against men, who have passed the prescribed age limit, who are seeking employment. We believe that by following a policy of attempting to reach fair settlements with the railroad employers of the country, taking the minor injury cases out of the hands of lawyers, we will be able to improve conditions with respect to the settlement of injury cases as they now exist.

"In cases where employees are permanently injured so that they cannot return to their former occupation, it is expected that every fair and reasonable effort will be made to adjust claims for damages direct with the railroads, either by the injured member himself or through the medium of his chosen representative among the officers and members of the Brotherhood.

"In cases where fair settlements cannot be obtained in this manner and where it appears necessary to litigate such claims, the Brotherhood will select attorneys located at strategic points in the United States, to whom injured members, and dependents of those killed, may resort for advice and assistance.

"Our agreements with these attorneys will require them to advise members without charge with a view to enabling them, or their representatives among the officers and members of the Brotherhood, to negotiate settlements direct with the railroad company. In all cases where it becomes necessary to commence suit, these regional lawyers will prosecute the cases of these members, and dependents, for a contingent fee of twenty percent of the net amount recovered in settlement of trial.

"Contracts will be entered into directly between these lawyers and the claimants on forms approved by the Legal Aid Bureau. Regional attorneys will be re-

quired to advance all necessary court costs, expert witness fees, expense of medical examinations, etc. These expenses will be deducted from the amount of the [fol. 714] recovery before a division is made of the net amount recovered. All expenses incurred in handling of claims by regional attorneys will be subject to approval by the Legal Aid Bureau. A small portion of the attorney's fee, not yet definitely determined upon, will be turned over to the Grand Lodge for the purpose of maintaining the Legal Aid Bureau. There will be no obligation upon the part of members to consult or employ regional counsel, but we believe it will be to their best interest to do so in cases where such consultation seems advisable for the reason that the Brotherhood will contract with only high class, capable and experienced railroad damage suit lawyers, and the charges in such cases will be from thirteen to thirty percent less than is now charged for similar service. "The injured member, or dependent, will at all times retain control of his case in the hands of the regional attorney, so that no settlement may be made without his approval.

"The Brotherhood will not assume any responsibility for the care and maintenance of injured members during the pendency of the adjudication of their claims. This, of course, will not interfere with the usual assistance which is given in needy cases by subordinate lodges, nor prevent members from entering into any agreements for financial assistance which they may see fit to enter into with lawyers they have employed to handle their claims.

"It must be understood that the Legal Aid Bureau will be entirely separate from the beneficiary and pension departments of the Brotherhood, and that no efforts which may be put forth by the bureau or any regional counsel to secure adequate compensation for injured men will be construed as having any relationship to the allowance or disallowance of insurance or pension claims. Regional attorneys will be required to report all settlements and verdicts to the Legal Aid Bureau, together with a statement of facts showing

cause of the injury and extent of the disability; this for the purpose of determining whether maximum results are being obtained by certain regional lawyers in certain regions as compared with those in other regions.

"The Legal Aid Bureau will periodically disseminate information to the several regional counsel, as well as to the lodges and members, bearing upon the rights of injured railroad men and the work of the bureau."

[fol. 715] 4. The Legal Aid Department of the Brotherhood maintained and maintains a central office in Cleveland, Ohio, at the national headquarters of the Brotherhood. In that office, it has a chief clerk, who is in charge of the Department, stenographers, file clerks and a research analyst. The Cleveland office of the Legal Aid Department serves as a clearing house which receives reports from all Brotherhood subordinate or local lodges of instances in which members have been injured or killed in railroad accidents. It notifies the appropriate regional counsel, and regional investigator, hereinafter referred to in more detail, of all such accidents.

5. Operating in conjunction with the Legal Aid Department were approximately sixteen lawyers, each designated by the Brotherhood as a "Regional Counsel," and assigned a zone, or région, of operation, which at times followed geographical lines, but at other times instead, tended to follow railroad system lines. The dominant considerations in the selection of regional counsel were the Brotherhood's confidence in the ability of the attorney. Also operating in conjunction with the Legal Aid Department were a number of "Regional Investigators," whose principal function and duty was to see to it that the officers of the local or subordinate lodges reported to the Legal Aid Department instances of injury to and death of members of the Brotherhood so that the records of the Legal Aid Department would be complete. They sometimes made preliminary investigations of the facts surrounding such an injury or death. They also engaged in other activities hereinafter referred to, relating to the employment of

Regional Counsel in cases involving such injuries and deaths.

Respondent McNurlan stated that his duties as Regional Investigator were as follows:

[fol. 716] "As Regional Investigator for the Brotherhood of Railroad Trainmen, it has been my function in the case of railway accidents to members of the Brotherhood resulting in personal injuries or death to make a preliminary investigation of all such accidents coming to my attention from either the Cleveland Office of the Legal Aid Department or from a Local Lodge officer or from the Brotherhood member involved, and within my territory hereinbefore outlined, in order to: (1) gather certain necessary information and statistics on each such accident for the Cleveland Office of the Legal Aid Department on the cause of the accident, the nature and extent of the injuries and the fault, if any, upon the part of the railroad company, including any apparent violations of the Safety Appliance Act, the Boiler Inspection Act, the Air Brakes Act, the 72 Hour Law and the Hours of Service Law; (2) apprise the injured member, or the survivors in the case of death, of the existence of the various departments of the Brotherhood, including Insurance, Legal Aid and Protective Departments as they might relate to the particular circumstances of the casualty involved.

"My function as Regional Investigator also includes performing such special duties as the national President assigns to me from time to time, . . .

"It has also been part of my function to do investigative work for Regional or Legal Counsel.

"My function as Regional Investigator further includes assisting various local lodge officers and injured members of the Brotherhood in obtaining information and advice on matters pertaining to grievances, local Lodge functions and matters, state meetings, etc.

"It is further my function as Regional Investigator to answer any questions injured members, or their sur-

vivors, have respecting casualties sustained by them, that are proper for me to answer as a lay investigator, or to refer any questions, if the member desires it, that involve giving legal advice or legal counsel, to the Regional or Legal Counsel."

6. The 1930 plan for the operation of the Legal Aid Department originally was that the injured member, or survivor or representative of a member who had sustained fatal injury, would contract with regional counsel [fol. 717] for representation in a claim or case against the railroad on a 20 per cent contingent fee basis, with the agreement on the part of regional counsel to turn over one-fourth of that fee, or 5 percent of the recovery, to the Brotherhood for maintenance of the Legal Aid Department. Such contracts were to be on forms approved by the Legal Aid Department, and such regional counsel was to advance all necessary court costs, expert witness fees, expense of medical examinations, and like expenditure items. These expenses were to be deducted from the amount of recovery before a division would be made of the net sum between the regional counsel and the claimant. Subsequently, and about in the year 1938, a change was made in the contingent fee provisions so that the claimant was required to sign two contracts covering a contingent fee of 25 per cent—one contract calling for 19 per cent to the regional counsel for his services, and the other for 6 per cent to the Brotherhood for the maintenance of the Legal Aid Department, with its investigating service. As of June 15, 1946, this fee procedure was again changed so as to permit regional counsel to handle the cases on a flat 25 per cent basis, but requiring them to pay the investigators, members of the Brotherhood staff, on a quantum meruit basis, for their services. Another change in this fee and expense procedure subsequently occurred, which persisted up until the time of the filing of the instant proceeding. Under this change, regional counsel agreed with the Brotherhood to, and did, charge a 25 per cent contingent fee, and agreed to, and did, pay all court costs, medical examination fees, expert witness fees, transcript costs, cost of printing on appeals, and the total cost of

operating the Legal Aid Department. This latter item—i.e: the total cost of operating the Legal Aid Department—was apportioned among the regional counsel in the ratio [fol. 718] that the respective gross recoveries of each regional counsel bore to the total gross recoveries by regional counsel throughout the country. Periodically throughout the year the Legal Aid Department assessed each regional counsel for his proportionate share of the total cost of operating such Department, and at the end of the year each regional counsel was billed for the balance of his assessment. The Brotherhood also maintained a practice of apportioning the expenses of its conventions amongst its various "departments" on the basis of the amount of time spent in discussing, on the floor of the convention, the affairs of that department. The Legal Aid Department's share of this cost was assessed against and paid by regional counsel.

7. The Brotherhood constitution requires that the secretary of each local lodge submit to the Legal Aid Department a report on each injury or death of a member in railroad service, and blank forms were furnished to the local lodges for the making of such reports. It was the duty of the local chairman of each lodge of the Brotherhood, or some other official of such lodge, to call upon the injured member, or the bereaved family of a fatally injured member, and advise them that they were entitled to avail themselves of the benefits of the Legal Aid Department free of charge, could consult regional counsel regarding their rights arising out of the injury or death free of charge, and could employ regional counsel at a charge not in excess of 25 per cent of the amount of any recovery, and that such percentage would include expenses incidental to the investigation and litigation of the claim. These representatives of the Brotherhood's local lodges and the regional investigators recommended and urged [fol. 719] the injured member, and the families of deceased members, that their claims and cases against railroads be handled by the Legal Aid Department, and that the Brotherhood's regional counsel be employed to prosecute such claims and cases,

8. While the members of the Brotherhood were not compelled to employ regional counsel for the handling of their claims and suits, the fact that Regional Counsel had been designated, who they were, and that they were available to the Brotherhood members through the Legal Aid Department was regularly brought to the attention of the membership, not only in the manners above set out, but through the Brotherhood's publications, circulars and convention programs, and by announcements and talks on the subject made at meetings of various sorts. We note that, in two jurisdictions other than Missouri, namely; California and Illinois (Cf. *Hildebrand v. State Bar of California* (1950), 225 P. 2d 509, and *In Re Brotherhood of Railroad Trainmen* (1958), 13 Ill. 2d 391, 150 N.E. 2d 163), it has been found that the following practices were carried on in those jurisdictions under the Brotherhood's national Legal Aid Department plan, viz: the local lodge officers or representatives who made contact with the injured member, and the regional investigator, carried blank copies of contracts for the employment of regional counsel, or the firm of attorneys with which the regional counsel was affiliated; if a signed contract of employment of regional counsel was not obtained in the field, an injured member, or the representative of a deceased member, or the other interested party, were often brought to the office of regional counsel, sometimes by a regional investigator, and sometimes by some other member-representative of the Brotherhood; in such cases, the expenses of the trips were paid by regional counsel, and the expenses of the regional investigator or other member-representative (including [fol. 720] reimbursement of the latter for his time at his regular hourly wage rate) were also paid by regional counsel; and, in addition, on many occasions, the person or persons bringing an injured member, or the representative of a deceased member, to the office of regional counsel would be given a "gratuity" in money by regional counsel. However, neither of the respondents Lush, McGlynn, McNurlan, Zamarioni, Gunn or Woodson were parties to the California or Illinois proceedings.

9. The respondent Phillip B. Lush was and is a lawyer admitted to the practice of law within the State of Min-

nesota. Since May 23, 1949, he has been one of the Regional Counsel for the Brotherhood under the Legal Aid Department plan, assigned to a zone, region or territory which included portions of the State of Missouri, and mostly in western Missouri. Since February 1, 1952, he has been a member of the Brotherhood. Prior to January 1, 1956, he was a member of the law firm of Davis, Rerat, Yeager & Lush located in Minneapolis, Minnesota, and, since January 1, 1956, he has been the sole member of a law firm known as Davis & Lush, located in said city and state.

10. The respondent Dan McGlynn was and is a lawyer admitted to the practice of law in the State of Illinois, with an office in the City of East St. Louis, Illinois. Since July 1, 1954, he has been a member of the Brotherhood of Railroad Trainmen. Since May 1, 1954, he has been a Regional Counsel of the Brotherhood under the Legal Aid Department plan of the Brotherhood, and, as such, since March 1, 1956, was assigned to a zone or region of operation which included portions of the State of Missouri, mostly in eastern Missouri.

11. The respondent W. P. Kennedy, was, and now is, a member and President of the respondent Brotherhood of Railroad Trainmen, and a member of its Grand Lodge. Amongst his functions as such President were the appointment and removal of the Regional Counsel and the [fol. 721] Regional Investigators, who served at his pleasure, the determination and designation of the zone, region or territory for their operations, and the general control and supervision of the Legal Aid Department.

12. The respondents W. A. Woodson and E. G. Gunn, were, and now are, residents of the State of Missouri, members of the Brotherhood, and officers of local or subordinate lodges of the Brotherhood located in the State of Missouri. As such members and lodge officers, each performed in Missouri the duties required of them by, and conducted themselves in Missouri in accordance with, the aforesaid Legal Aid Department plan.

13. The respondent G. A. McNurlan was and is a resident of the State of Wisconsin. He has been, since October 15, 1954, a Regional Investigator for the Brotherhood under

the aforesaid Legal Aid Department plan for the zone, region or territory which coincided with the zone, region or territory of respondent Lush's operations in Missouri as Regional Counsel. In addition to being such Regional Investigator, and paid by the respondent Brotherhood as such, respondent McNurlan was employed by respondent Lush as an investigator of so-called "non-brotherhood cases," and was paid a salary and expenses by respondent Lush in that capacity.

14. The respondent Frank Zamarioni was and is a resident of the City of East St. Louis, Illinois. Since March 12, 1956, he has been a Regional Investigator for the Brotherhood under the aforesaid Legal Aid Department plan, for a zone, region, or territory which included a portion of the zone, region or territory of respondent McGlynn's operations in Missouri as Regional Counsel.

15. None of the respondents has ever been admitted to the practice of law in the state of Missouri, or authorized to practice law in said State.

[fol. 722] 16. Each subordinate lodge of the respondent Brotherhood had one or more designated persons, whose duty it was to report to the Cleveland office as aforementioned, and aid the regional investigator in contacting its injured members, or the dependents of a member who had been killed in a railroad accident, and the respondents W. A. Woodson and E. G. Gunn, among others, acted in such capacity in Missouri.

17. In the opinion of this Court, the national Brotherhood Legal Aid Department plan, as it has evolved and to the extent it has been followed and observed in Missouri, providing for contacting such injured member of the Brotherhood, or the dependents of a member who had been killed, by the representatives of the Brotherhood, including respondents McNurlan, Zamarioni, Woodson and Gunn, has been conducive to and has resulted in solicitation in Missouri of the employment of regional counsel, including respondents Lush and McGlynn, for the purpose of collecting damages against railroad companies. The Court also has been advised by the Informants, and this Court

believes, that there has, in some instances, been solicitation in fact by the respondents. This Court further finds, in this connection; that, in accordance with the Legal Aid Department plan of the Brotherhood, in some instances as a result of some contacts in Missouri on the part of the said representatives of the Brotherhood, contracts were secured with such prospective clients whereby regional [fol. 723] counsel, including respondents Lush and McGlynn, were employed to represent such clients in their claims for personal injuries or damages for death; and such regional counsel, including respondents Lush and McGlynn, acknowledge that they have in some instances with respect to such clients advanced funds for medical examination, other costs and expenses of litigation and, in some instances, would advance funds for living expenses of the clients while said action was pending.

18. The persons so contacted represented both members and non-members of the Brotherhood, and, where the client was a member of the Brotherhood, generally provided for the payment of a contingent attorney fee in the amount of 25 per cent of whatever was recovered, and in the case of non-members for a fee of $33\frac{1}{3}$ per cent of whatever was recovered.

19. Salaries and compensation paid to the respondents McNurlan and Zamarioni as Regional Investigators were paid by respondents Lush and McGlynn, either directly, or indirectly by having such sums channeled through the Legal Aid Department of the Brotherhood.

20. The aforementioned law firm of Davis & Lush, of which respondent Lush was the sole member, employed, among others, one Louis N. Crill, an attorney residing in Excelsior, Minnesota, the respondent McNurlan, another Regional Investigator named G. A. Clinkenbeard, and three stenographers named Romaine Chiorabel, Mary C. Graham, and Joy Shughart. During the period from March 1, 1956, to February 15, 1959, there was maintained at Room 508 Wirthman Building, 3100 Troost Avenue, Kansas City, Missouri, an office which was designated upon its door, upon the building directory, and in the Kansas City telephone directory, as "Brotherhood of Railroad Train-

men, Investigation Office." The business in said office was [fol. 724] conducted by respondent Lush, and the employees of his law firm just above mentioned. Some correspondence was carried on from there on the letterhead of respondent Lush's Minneapolis law firm. There was available there, as well as in the possession of McNurlan, a form of letter, which in the opinion of the Informants here amounts to a form of contract and which respondent Lush acknowledges amounts to a "form of offer to contract," as follows:

"Davis and Lush
604 Baker Building
Minneapolis, Minnesota

Gentlemen:

I would like to have you represent me in my claim against the Railroad Company arising out of my accident on

I am willing to pay you twenty-five per cent of the amount recovered by settlement or suit, plus court costs and witness fees, but not including your expenses.

If you agree to handle my case on this basis I want it understood that you will not settle my case without my consent and that the check will be made payable to me.

If you are willing to handle my case on this basis, please sign the extra copy of this letter and return it to me.

Yours very truly,"

These letter forms were frequently completed, by the filling in of the appropriate blank spaces and being signed, by persons having claims against railroad companies, and, when executed by said persons were forwarded to Minneapolis for acceptance by respondent Lush. All of the expenses of said office in Kansas City, in the aggregate amount of at least \$23,268.15 (exclusive of salary paid McNurlan), were paid by respondent Lush, or his law firm of Davis & Lush.

[fol. 725] 21. The respondent Lush paid to the Brotherhood, as his share of the expense of operation of the Legal Aid Department, a total of \$31,825.68 during the period from January 1, 1956, to March 25, 1960. The respondent McGlynn paid to the Brotherhood, for such purpose, a total of \$8,622.00 during the period from August 1, 1955, to March 3, 1958.

22. Since January 1, 1956, the respondent Lush was employed by at least 27 residents of Missouri, all but one of whom resided in western Missouri, to represent them in claims against railroad companies arising out of injuries or death. Since March 1, 1956, the respondent McGlynn was employed by at least 12 persons, residents of or who were injured in eastern Missouri, to represent them in claims against railroad companies arising out of injuries.

23. The respondents, and each of them, represent that they are fully cognizant with the decision of the Supreme Court of Illinois in the case of *In Re Brotherhood of Railroad Trainmen* (1958) 13 Ill. 2d 391, 150 N.E. 2d 163, 167 (5), wherein it was said:

"The objective of the Brotherhood in seeking to secure competent legal representation of its members can be accomplished without lowering the standards of the legal profession. The Brotherhood has a legitimate interest in investigating the circumstances under which one of its members has been injured. That interest antedates the occurrence of any particular injury. We are of the opinion that the Brotherhood may properly maintain a staff to investigate injuries to its members. It may so conduct those investigations that their results are of maximum value to its members in prosecuting their individual claims, and it may make the reports of those investigations available to the injured man or his survivors. Such investigations can be financed directly and without undue burden by the 218,000 members of the Brotherhood.

"The Brotherhood may also make known to its members generally, and to injured members and their survivors in particular, first, the advisability of obtaining legal

[fol. 726] advice before making a settlement and second, the names of attorneys who, in its opinion, have the capacity to handle such claims successfully. Its employees, however, may not carry contracts for the employment of any lawyer, or photostats of settlement checks. No financial connection of any kind between the Brotherhood and any lawyer is permissible. No lawyer can properly pay any amount whatsoever to the Brotherhood or any of its departments, officers or members as compensation, reimbursement of expenses or gratuity in connection with the procurement of a case. Nor can the Brotherhood fix the fees to be charged for services to its members. The relationship of the attorney to his client must remain an individual and a personal one."

24. The respondents, and each of them, have represented that they presently are not engaging in any of the practices condemned in the above quoted decision, nor in any of the improper practices hereinbefore referred to and set forth, and that they will not engage in any such practices in Missouri at any time in the future; therefore, and thereupon, the Informants, consisting of the Advisory Committee of the Missouri Bar Administration, have dismissed their Information with respect to contempt as to all respondents, and the Citation to show cause why respondents should not be punished for contempt should be withdrawn as to all respondents without prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED:

I. That, as to the respondent C. R. Maher, only, who was never served with process, this cause is dismissed without prejudice.

II. That, the Information and Citation, insofar as the same relate to contempt, be, and the same are hereby, dismissed as to each respondent, without prejudice.

III. That in the procurement, within the State of Missouri, of the employment of a lawyer to render any legal services, the respondents Brotherhood of Railroad Train-

men, W. P. Kennedy, G. A. McNurlan, Frank Zamarioni, W. A. Woodson, and E. G. Gunn, and all persons in any way or in any manner acting by, through and under them [fol. 727] or either of them, are hereby jointly and severally permanently enjoined and restrained from, in any way or in any manner:

- a. Telling any person or his representatives that said person has a cause of action, the amount he is entitled to recover, where suit should be filed, or doing any other act or thing which constitutes the practice of law within the State of Missouri;
- b. Negotiating or attempting to negotiate contracts of employment for legal services on behalf of any lawyer or lawyers;
- c. Accepting pay or any gratuity or benefit whatsoever, directly or indirectly, from any lawyer, person or organization for services in obtaining contracts of employment for legal services;
- d. Either personally or for or on behalf of any other person, loaning or advancing or promising to loan or advance money to any person or his representative pending trial or settlement of his claim or suit;
- e. Displaying, exhibiting, or showing copies or photographs of checks, releases, newspaper accounts or other data concerning settlement made on behalf of other claimants for the purpose of inducing any person, or his representatives, or which may tend to induce said person, to enter into contracts for the legal services of any lawyer;
- f. Making unsolicited calls upon any person for the purpose of soliciting contracts for the employment of a lawyer by such person, or for the purpose of recommending or urging the employment of a lawyer by such person;
- g. Conspiring with any resident or nonresident lawyer to violate the laws of Missouri concerning the practice of law within the State of Missouri, or the Canons of Legal Ethics imposed by the Supreme Court of

Missouri on lawyers licensed to practice law in the State of Missouri;

h. Violating or aiding or abetting the violation of the provisions of paragraphs IV and V of this decree.

IV. That in the procurement, within the State of Missouri, of employment of him to render legal services, the [fol. 728] respondent Phillip B. Lush as an individual and as a lawyer admitted to the practice of law within the State of Minnesota, and all persons acting by, through or under him, in any way or in any manner, either personally or by or through an agent, servant, employee, partner, or associate are hereby jointly and severally enjoined and restrained from in any way or in any manner:

a. Soliciting employment as a lawyer in the State of Missouri;

b. Paying any person, either directly or indirectly, for services rendered within the State of Missouri in obtaining or soliciting such employment of him, or accepting any such employment or any benefit derived from any such solicitation;

c. Premising to loan or advance, or loaning or advancing, money to any person or persons at any time for the purpose of inducing said person or persons to employ said respondent, either jointly or severally;

d. Communicating in any way with any person for the purpose of soliciting such employment;

e. Violating the laws of Missouri concerning the practice of law within the State of Missouri or Canons of Legal Ethics imposed by the Supreme Court of Missouri, required of and observed by resident lawyers licensed in the State of Missouri;

f. Conspiring to violate the laws of the State of Missouri or the Canons of Legal Ethics imposed by the Supreme Court of Missouri on lawyers licensed to practice in the State of Missouri;

g. In any way or in any manner violating or aiding and abetting the violation of the provisions of Paragraph III of this decree.

V. That in the procurement, within the State of Missouri of employment of him to render legal services, the respondent Dan McGlynn as an individual and as a lawyer admitted to the practice of law in the State of Illinois, and all persons acting by, through or under him, in any way or in any manner, either personally or by or through an [fol. 729] agent, servant, employee, partner or associate, are hereby jointly and severally enjoined and restrained from in any way or in any manner:

a. Soliciting employment as a lawyer in the State of Missouri;

b. Paying any person, either directly or indirectly, for services rendered within the State of Missouri in obtaining or soliciting such employment of him, or accepting any such employment or any benefit derived from any such solicitation;

c. Promising to loan or advance, or loaning or advancing, money to any person or persons at any time for the purpose of inducing said person or persons to employ said respondent, either jointly or severally;

d. Communicating in any way with any person for the purpose of soliciting such employment;

e. Violating the laws of Missouri concerning the practice of law within the State of Missouri or Canons of Legal Ethics imposed by the Supreme Court of Missouri, required of and observed by resident lawyers licensed in the State of Missouri;

f. Conspiring to violate the laws of the State of Missouri or the Canons of Legal Ethics imposed by the Supreme Court of Missouri on lawyers licensed to practice in the State of Missouri;

g. In any way or in any manner violating or aiding and abetting the violation of the provisions of Paragraph III of this decree.

VI. The respondent Brotherhood of Railroad Trainmen, its officers, employees and representatives; and all persons in any way or in any manner acting by, through or under it, are hereby permanently restrained and enjoined

from in any way or in any manner fixing the fees of any lawyer or lawyers for services rendered to its members, or dependents or personal representatives of deceased members.

VII. The respondent Brotherhood of Railroad Trainmen, its officers, employees and representatives, and all [fol. 730] persons in any way or in any manner acting by, through or under it, are hereby permanently restrained and enjoined from having any financial connection with any lawyer or lawyers wherein or whereby such lawyer or lawyers in any way or in any manner would support or maintain the Legal Aid Department, or any similar department or bureau, of said Brotherhood.

VIII. That costs of this proceeding are hereby taxed against the respondents.

BY THE COURT:

/s/ LAURANCE M. HYDE
Chief Justice
Supreme Court of Missouri

The foregoing CONSENT DECREE is approved as to content and form.

/s/ ROBERTS P. ELAM and
GEORGE S. HECKER
Attorneys for Informants

/s/ LYMAN FIELD—CLAY C. ROGERS
Attorney for respondents
Phillip B. Lush and G. A. McNurlan

/s/ DANIEL P. REARDON
Attorney for respondents Brotherhood
of Railroad Trainmen, W. P. Kennedy,
W. A. Woodson, E. G. Gunn, Dan McGlynn and Frank Zamarioni

STATE OF MISSOURI—SCT.:

I, MARION SPICER, Clerk of the Supreme Court of Missouri, do hereby certify that the foregoing is a true copy of the consent decree of said Court, entered on the 14th day of November, 1960, as fully as the same appears of record in my office.

(Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court. Done at office in the City of Jefferson, State aforesaid, this 21st day of September, 1961.

/s/ MARION SPICER, Clerk.

[fol. 731]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 31

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON
IN CHANCERY

THE STATE BAR OF MICHIGAN,

Plaintiff,

—vs—

THE BROTHERHOOD OF RAILROAD TRAINMEN, FRANK J. CARR,
L. M. HASBROUCK, RAYMOND FIEBERKORN, THOMAS W.
FLETCHER, W. C. CORYELL, L. E. SINGER, E. V. SURDAM,
H. F. MCCALL, R. J. JOHNSON, L. A. RUSSELL, A. V.
GRANDSTAFF, W. T. ELLSWORTH, R. J. SNOW, and WILLIAM
E. B. CHASE, and all other members, agents and officers
of the Brotherhood of Railroad Trainmen in the State
of Michigan,

Defendants.

BILL OF COMPLAINT

T-640

The State Bar of Michigan respectfully represents unto
this Honorable Court:

2.

That the Brotherhood of Railroad Trainmen is a national railway labor organization, with principal office in Cleveland, Ohio, but having branches, members, officers and agents throughout the United States, including the State of Michigan.

.

[fol. 732]

6.

Plaintiff is further informed and believes, and therefore alleges as true, that representatives of the Brotherhood of Railroad Trainmen are reimbursed for their time in bringing injured employees or the survivors of the deceased employees to the offices of the Regional Counsel. Reimbursement is at the member representative's hourly rate of pay on the railroad. Member representatives are also reimbursed for any out-of-pocket expenses incurred in bringing injured employees or the survivors of deceased employees to Regional Counsel.

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[fol. 733]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 31

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON
IN CHANCERY

THE STATE BAR OF MICHIGAN,

Plaintiff,

vs.

THE BROTHERHOOD OF RAILROAD TRAINMEN, FRANK J. CARR,
L. M. HASBROUCK, RAYMOND FIEBERKORN, THOMAS W.
FLETCHER, W. C. COBYELL, L. E. SINGER, E. V. SURDAM,
H. F. MCCALL, R. J. JOHNSON, L. A. RUSSEL, A. V.
GRANDSTAFF, W. T. ELLSWORTH, R. J. SNOW, and WILLIAM
E. B. CHASE, and all other members, agents and officers
of the Brotherhood of Railroad Trainmen in the State
of Michigan,

Defendants.

BILL OF COMPLAINT

T-640

ANSWER TO BILL OF COMPLAINT

Now come the defendants by EDWARD B. HENSLEE, JR.,
MARTIN K. HENSLEE, JOHN J. NAUGHTON and ARTHUR
LUMLEY, their attorneys, and for answer to the Bill of
Complaint say:

1.

Defendants admit the allegations of paragraphs one and
two of the Bill of Complaint.

[fol. 734]

3.

Defendants admit that in the year 1930 the Trainmen organized and established a department of the Trainmen designated as the "LEGAL AID DEPARTMENT". Defendants admit that the representations alleged were stated, along with other representations, as factors to be considered in deciding whether a legal aid department should be established. Defendants deny all other allegations of paragraph four of the Bill of Complaint.

Defendants aver that on a referendum questionnaire and ballot in 1930, the members of the lodges of the Trainmen in the United States voted by a majority vote of eleven to one that a legal aid department should be organized.

Defendants further aver that the said Legal Aid Department was thereupon organized as a part of or department of the defendant Trainmen and, as constituted, was directly subject to the provisions of the Constitution of the Trainmen and to the authority of the president of the Trainmen.

Defendants further aver that the title of the said Legal Aid Department was changed by order of the president of the Trainmen on or about January 1, 1959 and was redesignated as the "DEPARTMENT OF LEGAL COUNSEL". Defendants aver that the title of the attorneys designated for the several regions was at the same time [fol. 735] changed from "Regional Counsel" to their present designation as "Legal Counsel".

4.

Defendants aver that in many cases, but not in all, a member of the defendant Trainmen calls upon, contacts, or in some other manner explains to an injured member employee, or his bereaved family, the advisability of obtaining a lawyer, or the opinion of a lawyer, and recommends that they consult with the Legal Counsel designated, and further recommends that the Legal Counsel be retained if a lawyer is to be retained. Defendants further aver that some of the said members have represented, as was the fact in most cases arising in the Lower Peninsula

of the State of Michigan, that the legal counsel will not charge in excess of twenty-five percent (25%) of the amount of any recovery whether the recovery be effected by suit or settlement, and that this percentage would include expenses incidental to the investigation and any litigation of the claim.

Defendants further aver that this representation of the fee charged has been eliminated by order of the president of the Trainmen contained in his letter to all lodges dated March 16, 1959, effective April 1, 1959, hereinafter set out in the FIRST AFFIRMATIVE DEFENSE to this answer.

5.

Defendants admit the allegations of paragraph six of the Bill of Complaint as being in existence up to and including the 31st day of March, A.D., 1959.

[fol. 736] Defendants further aver that the said compensation and reimbursement has been terminated under the previously mentioned order of the president of the Trainmen dated March 16, 1959.

6.

Legal Counsel referred to above are attorneys designated by the defendant Trainmen in some seventeen regions designated by the said defendant as attorneys recommended for their qualifications and their integrity to be competent to prosecute claims arising under the Federal Employers' Liability Act for members of the trainmen in their designated regions.

7.

Defendants . . . they admit the Edward B. Henslee referred to at one time was the Regional Counsel for a region including the Lower Peninsula of the State of Michigan and that he had associates. Defendants further aver that the said Edward B. Henslee died on November 22, 1958.

[fol. 737]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 32

S. R. HARVEY

ELH:BH

Jan. 18th. 1937

Mr. A. E. Schwing,
Journal Department.

Dear Sir and Brother:—

Would you kindly add to the list of Regional Counsel appearing in The Railroad Trainman for the month of February the name of Bernard M. Savage, 521 Title Bldg. St. Paul & Lexington Sts. Baltimore, Md., his name to continue in all future issues of The Trainman, until notified to the contrary.

Faternally yours,

E. L. Harrigan
Deputy President

[fol. 738]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 33

ELH:BH

Jan. 19, 1937

Mr. Bernard M. Savage, Atty.,
521 Title Bldg.,
St. Paul & Lexington Sts.,
Baltimore, Md.

Dear Mr. Savage:—

I am pleased to advise that President Whitney has authorized me to notify you in accordance with the recom-

mendation I made to him a short time ago, that he has decided to appoint you as Regional Counsel for the Legal Aid Department of the Brotherhood of Railroad Trainmen in Baltimore.

I am enclosing herewith two copies of what we have chosen to term Rules and Regulations Governing Regional Counsel. If these are agreeable to you, will you kindly note your acceptance on one of the copies and return it to us.

All of the literature which we have published has been gotten out with the idea that we will have no hesitancy in having the railroad or others know just what our plan is. In fact, this literature has been quite freely circulated among railroad managements. We have, however, refrained from referring to the amount of attorneys' fees and the amount which is to be turned back to the Brotherhood, because we feel that this is a matter which concerns the Legal Aid Department and Regional Counsel alone, and which may be subject to change as time goes on and indications develop that such changes are warranted. The total amount to be charged to the client is 25% of the net amount recovered by suit or settlement. 6% of this amount is to be paid to the Brotherhood for the purpose of maintaining the Legal Aid Department and the investigating staff. In arriving at the net amount referred to, we generally leave that to the discretion of the Regional Counsel. In most instances witness fees, filing fees and the court costs are deducted from the gross, and then Regional Counsel is to receive 19% of the net and the Brotherhood 6% of the net.

I am enclosing herewith three sample contracts that we suggest be used when injured members of the organization, or the dependents of those who may be killed, authorize Regional Counsel to represent them, setting forth their agreement to pay the Brotherhood for investigation expense, etc. The sample copy of contract proposed for attorneys may be revamped as you see fit—it happens to be [fol. 739], the form used by certain other regional counsel at present. The other three forms to be used for the Brotherhood contracts, we have designated as, "No. 1, No. 2 and

No. 2-B"—No. 1 to be used by a member of the Brotherhood who is injured in the service, No. 2 to be used by the widow or dependents of the deceased, in case of death where an administrator has not been appointed, and No. 2-B, is to be signed where there has been an administrator or executor of the estate appointed. When such agreements have been executed, it is perfectly proper, when a case is settled, for Regional Counsel to have the client authorize him to pay to the Brotherhood the amount due it under the contract, and I am attaching hereto copy of a letter received from our Regional Counsel in Los Angeles, showing the form which he uses in forwarding to the Brotherhood the amount due it, and which he has been authorized by the client to pay.

It should, of course, also be clearly understood that all cases involving Brotherhood members, which are either brought directly to the Regional Counsel by the claimants themselves or by officers or members of the Brotherhood, as well as those which are referred to counsel by the Department, shall be considered as Brotherhood cases. We feel that this is necessary because we are advising our members that they may go direct to counsel if they choose, rather than to take the matter up with this Department.

You will note that the Rules and Regulations provide that the Department will undertake to make an investigation in all cases where the same is deemed advisable.

I am also enclosing herewith copies of two letters written by Mr. Tom J. McGrath our General Counsel, when he formerly managed the Legal Aid Department, in accordance with the instructions issued by President A. F. Whitney. You will kindly follow the suggestions contained in these letters, which are self explanatory.

I am also enclosing a directory for your information and as stated in foregoing, if you agree to the rules and regulations, would you kindly affix your signature to one copy and return the same for our file?

Your name will also appear in the February issue, and all succeeding issues of The Railroad Trainman, in the list of Regional Counsel appearing under the heading "Legal Aid Department".

With my very best wishes for your future success as Regional Counsel at Baltimore, and assuring you of our desire to cooperate and assist you in any way we can, I am,

Very truly yours,

E. L. Harrigan
Deputy President

encls.

[fol. 740]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 34

(Letterhead of Bernard M. Savage, Baltimore, Md.)

February 6, 1937.

Brotherhood of Railroad Trainmen,
B. of R. T. Bldg.,
820 Superior Ave., West,
Cleveland, Ohio.

Att: Mr. E. L. Harrigan, Deputy President.

Gentlemen:

I am in receipt of your letter of February 4th advising me of my appointment as regional counsel in Baltimore for the legal aid department of the Brotherhood of Railroad Trainmen. Permit me to express my sincere appreciation for this appointment, and I will do all in my power to conduct myself in this capacity in a way which will reflect credit upon the legal aid department of the Brotherhood.

In accordance with your suggestion, I am noting my acceptance on one of the copies of the rules and regulations governing regional counsel, which I am enclosing herewith.

Many thanks for your good wishes for my future success and offers of cooperation and assistance.

Yours very truly,

/s/ BERNARD M. SAVAGE

BMS:HS
encl.

[fol. 741]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 35

RULES AND REGULATIONS GOVERNING RELATIONS OF
REGIONAL COUNSEL AND THE BROTHERHOOD OF RAIL-
ROAD LEGAL AID DEPARTMENT

Regional lawyers will be selected in various railroad centers of the United States with a view to rendering the service contemplated by the establishment of the Legal Aid Department with the greatest degree of efficiency, keeping in mind the convenience of members and total membership in a given district so as to give regional lawyers a reasonable assurance of sufficient volume of Brotherhood business to warrant the rendering of proper service on the basis of compensation agreed upon.

When the regional lawyers are selected, and from time to time thereafter, articles will be published in the Trainmen's journal informing members of the services rendered by the Legal Aid Department and advising them also of the names and addresses of the regional lawyers.

When members are injured, either they or proper officers of their grievance committees or subordinate lodges, acting on their behalf, or in cases of the accidental death of members, their dependents, may write or call on the Legal Aid Department personally for information and advice as to their legal rights. They will be required to furnish, as nearly as possible, a full and complete statement of all of the facts surrounding the accidental death or injury. This will include written statements of witnesses, whenever and wherever obtained. Injured members, where there is any question as to the nature and extent of the disability, will be required to furnish statements from medical examiners.

In all major injury or death cases, upon request of the injured man or dependent, or an officer of the Brotherhood authorized to represent the claimant, an investigator employed by the Legal Aid Department will be assigned to investigate and ascertain the facts surrounding the accident or death. Reports of such investigation will be filed with the Department and when any such cases are referred to or brought to the regional counsel copies of such reports will be sent to them. The Legal Aid Department will endeavor to provide means for securing promptly, after the occurrence of all accidental injuries or deaths, the name and address of the injured members or dependents, as well as the character of the injury, so that the claimants may be expeditiously informed that the services of the Department and of regional counsel are at his or her disposal.

Members and their dependents, upon request therefor, will be advised as to the best course to pursue, in the judgment of the Legal Aid Department, to effect a settlement, [fol: 742] including advice as to what amount in the judgment of the Department, would constitute a fair settlement of the claim. The affairs of the Legal Aid Department will be conducted with the thought in mind primarily of encouraging amicable settlement, particularly in cases where total and permanent injury has not been sustained.

Requests for information and advice in minor cases will be discouraged in order to prevent the burden imposed on the Legal Aid Department from becoming unduly heavy and thereby unreasonably expensive.

In cases where close questions of liability are involved and intricate detailed information is essential to a proper determination of a member's rights, he may be referred to the regional attorney of his district. It will be the duty of this attorney to counsel with and advise the injured member with a view to enabling him or his Brotherhood representatives to effect a fair settlement. The Legal Aid Department will insist that regional lawyers in such cases advise members solely with a view to promoting the best interests of the members. Any over-reaching on the part of regional lawyers intended to induce members to sign contracts of employment will be discountenanced. In brief,

the Legal Aid Department will expect the regional lawyers to advise members of the Brotherhood in exactly the same way as they would advise a client who came in to them and paid for legal advice.

The Legal Aid Department will endeavor, through the medium of the Trainmen's journal and circulars periodically sent to officers and lodges, to keep the membership advised as to the names and addresses of regional counsel in their respective districts. It is anticipated that members and dependents, or lodge officers representing them, may go direct to regional counsel for information and advice, and all such cases will be handled by regional counsel in the same manner as if referred to them by the Legal Aid Department. In any such cases where major injuries are involved, a Legal Aid Department investigator will, at the request of the regional counsel, be assigned to investigate such cases, making a report in duplicate, one copy to the regional counsel and one copy to the Legal Aid Department.

In cases where members have exhausted their efforts in attempts to procure settlement; they will be referred to regional attorneys, with whom contracts may be made for the prosecution of their claims. It must be understood that the Brotherhood cannot undertake to control the actions of members in this regard, and that they will remain free to employ attorneys of their own choice. It is felt, however, that if the Brotherhood selects attorneys of outstanding [fol. 743] ability in their particular field of endeavor, that fact, together with the further fact that contracts will call for compensation substantially below that now charged for like service, will be sufficient inducement to attract a great majority of our members to regional counsel. Where it becomes necessary for members or their dependents to employ counsel, the regional attorneys shall enter into a contract with the claimant calling for the payment of a contingent fee of nineteen percent (19%) of the net amount recovered in suit or settlement, and at the same time the claimant shall enter into a contract with the Brotherhood agreeing to pay six per cent (6%) of the net recovery to reimburse the Legal Aid Department for investigation expense.

It will be incumbent upon regional counsel to provide all necessary medical examinations, after a contract has been signed, and to pay the fees and charges incident to the employment of expert witnesses, as well as court costs and other expenses incident to the prosecution of the claim, such expenses to be deducted from any recovery made in the particular case in connection with which the expense is incurred.

Regional attorneys will be required to report all cases handled by them in which a contract has been entered into with members of the Brotherhood, setting forth a statement of the facts involved, together with the amount of settlement or verdict received.

Regional counsel will be privileged to advise with the Legal Aid Department on questions of law, and it will be the policy of the department to disseminate information gathered from the several regional districts among all the regional counsel of the Brotherhood from time to time.

It will be understood that members will have control of their cases in the hands of regional counsel, and that no settlement of any case can be made without the consent of the client.

While the membership will be advised as to the names and addresses of regional counsel for their particular line of railroad, it will be impossible to control their choice of attorneys, and each member or dependent will have the option, either for reasons of choice or convenience, to consult with or employ any regional counsel. All cases involving injuries or death to members of the Brotherhood, either brought or referred to regional counsel, shall be considered as Brotherhood cases. The same rule shall apply in either personal injury or death cases which may be referred to counsel by the Legal Aid Department or its investigators.

APPROVED: /s/ BERNARD M. SAVAGE

[fol. 744]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 36

October 12, 1949.

WPK:SCL:VN

Mr. Bernard M. Savage,
Regional Counsel,
517 Title Building,
Baltimore, Maryland.

Dear Mr. Savage:

Effective October 15, 1949, the letter of former President A. F. Whitney, under date of January 19, 1937, appointing you as regional counsel for the Brotherhood of Railroad Trainmen and your appointment thereunder as such, as hereby canceled and terminated.

Thanking you for the manner in which you have represented injured members of the Brotherhood, and the dependents of deceased members, since your appointment, I am

Sincerely yours,

/s/ W. P. KENNEDY
President.

cc:

Mr. S. C. Lush, Manager,
Legal Aid Department.

[fol. 745]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 37

October 12, 1949.

WPK:SCL:VN

Mr. Bernard M. Savage,
Regional Counsel,
517 Title Building,
Baltimore, Maryland.

Dear Mr. Savage:

Because of your experience and outstanding success in handling cases for our members who have been injured, and for the dependents of those killed while employed on the railroad, and having full knowledge of your honesty and integrity, I have decided to reappoint you regional counsel for the Brotherhood of Railroad Trainmen, effective October 15, 1949, within the same territory in which you served under your former appointment.

Sincerely yours,

/s/ W. P. KENNEDY
President.

cc:

Mr. S. C. Lush, Manager,
Legal Aid Department.

[fol. 746]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 42

Re: C. M. Carson—Lodge 858

March 14, 1955

Mr. A. L. Allen, S&T
P. O. Box 266
Victoria, Virginia

Dear Brother Allen:

Thank you for sending us your report covering Brother C. M. Carson's injuries, and which are of such seriousness that he should not discuss his case and the manner in which the accident happened with any representative of the railroad until his rights under the law have been explained to him.

Your LA-1 reports lists the date of injury as April 5, will you please advise us what is the correct date.

Legal Counsel B. M. Savage is receiving a copy of this letter and undoubtedly a Regional Investigator will get in touch with Brother Carson at an early date. In the meantime, I hope you will find it convenient to contact Brother Carson or some member of his family, and advise him of the existence of the Legal Aid Department and its function, and be sure to caution him against giving any statement if he has not already done so, until he has been advised as to his rights under the law, as you, of course, know that claim agents are employed by the railroads for the express purpose of keeping from injured employees a considerable part of the money due them under the law. And one of the methods used for bringing this about is for the claim agent to secure a statement at an early date worded in such a way as to show that the injury was not as a result of any fault of the railroad.

The claim agents are experts at wording statements so that the injured employee does not realize that his legal rights are being harmed considerably by the manner in which the statement is worded; and being injured he per-

haps will not give too much thought to the exact wording of the statement as long as it gives the general idea as to how the accident happened.

Assuring you that was, indeed, sorry to learn of the serious injuries sustained by Brother Carson, and looking forward to hearing from you when there are further developments, I am

Fraternally yours,

C. R. MAHER, Chief Clerk
Legal Aid Department

CRM:ds

cc: Mr. C. M. Carson, member
Mr. B. M. Savage, Legal Counsel—A

[fol. 747]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 42-A

March 15, 1955

Mr. C. R. Maher, Chief Clerk
Legal Aid Department
Brotherhood of Railroad Trainmen
1370 Ontario Street
Cleveland 13, Ohio

Re: Charles M. Carson—Lodge 858

Dear Brother Maher: ●

I have been employed to represent Brother Carson through his son, George M. Carson, copies of letter of employment and F-LA-2 enclosed herewith.

Will keep you advised of developments.

Fraternally yours,

/s/ BERNARD M. SAVAGE

BMS:T
Enc. (2)

[fol. 748]

PLAINTIFF'S EXHIBIT 44

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

Re: W. H. Cobb—Lodge 389

October 3, 1955

Mr. C. C. Harrill, Jr., Sec.
507 Arnold Avenue
Richmond 22, Virginia

Dear Sir and Brother:

Thank you for sending us your report covering Brother W. H. Cobb's injury on September 27, 1955.

In view of the serious complications often associated with the type of injury, Brother Cobb should be examined and receive advice as to the extent of his injuries by a competent doctor who is in no way connected with the railroad; and it is also important that he get information about his rights under the Federal Employers' Liability Act before discussing his case with any railroad representative, as this law governs the rights of the men who are injured and the dependents of those killed while on railroad duty.

Legal Counsel Bernard M. Savage, 2900 Mathieson Building, Baltimore & Light Streets, Baltimore, Maryland, will receive a copy of this letter and will be glad to give information and advice to Brother Cobb, as well as the name of a doctor upon whose integrity and judgment he may fully depend, as part of the service of this department to which he is entitled as a member of the Brotherhood. This information will prove valuable to him in securing a fair settlement sufficient to compensate him or his injuries.

Kindly advise when there are further developments.

Faternally yours,

C. R. MAHER, Chief Clerk
Legal Aid Department

CM:rl

cc: Mr. B. M. Savage, Legal Counsel—R
Mr. W. H. Cobb, member

[fol. 749]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 50

August 10, 1954

Re: William B. Fauntleroy—Lodge 898

Mr. D. C. Hughes, Sec.
1203 Colonial Avenue
Alexandria, Va.

Dear Sir and Brother:

Thank you for sending us your report covering Brother William B. Fauntleroy's injury on July 7, 1954.

Because of the serious complications often associated with Brother Fauntleroy's type of injury, I would suggest that he refrain from returning to work until he is examined and receives advice as to the extent of his injury by a competent doctor who is in no way connected with the railroad. Legal Counsel B. M. Savage will be happy to recommend to Brother Fauntleroy such a doctor in whose ability and integrity of judgment Brother Fauntleroy may have complete confidence. Too often employees with similar injuries return to work before they have completely recovered only to find later on that they are going to have further difficulty.

I am sending a copy of this letter to Legal Counsel B. M. Savage, 2900 Mathieson Building, Baltimore and Light Streets, Baltimore, Maryland, and am sure that he will be glad to advise Brother Fauntleroy as to his rights under the law.

Kindly advise when there are further developments.

With best wishes, I am

Faternally yours,

C. R. MAHER, Chief Clerk
Legal Aid Department

CRM:ds

cc: Mr. W. B. Fauntleroy, member
Mr. B. M. Savage, Legal Counsel—R

[fol. 750]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 50-A

(Letterhead of Bernard M. Savage, Baltimore 2, Md.)

August 17, 1954

Mr. C. R. Maher, Chief Clerk
Legal Aid Department
Brotherhood of Railroad Trainmen
1370 Ontario Street
Cleveland 13, Ohio

-Re: William B. Fauntleroy—Lodge 898

Dear Brother Maher:

Our mutual friend, Brother Louis Dyer, General Chairman on the RF&P, informs me that Fauntleroy is still in a body cast and when this is removed he will have to wear a brace. He feels sure that the Department will handle the case but Fauntleroy is in no hurry to push the matter yet as he wants to see how he gets along.

Will keep you advised of developments.

Fraternally yours,

/s/ BERNARD M. SAVAGE

BMS:T

[fol. 751]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 50-B

(Letterhead of Bernard M. Savage, Baltimore 2, Md.)

26 November 1954

Mr. C. R. Maher, Chief Clerk
Legal Aid Department
Brotherhood of Railroad Trainmen
1370 Ontario Street
Cleveland, 13, Ohio

Re: W. B. Fauntleroy—Lodge 898

Dear Brother Maher:

Wish to advise that Brother Fauntleroy has employed the Department to handle his claim for him, copies of contract and F-LA-2 are enclosed herewith.

Will keep you advised of developments.

Fraternally yours,

/s/ BERNARD M. SAVAGE

BMS:I

Encl. (2)

[fol. 752]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 62

June 19, 1958

Re: Clint B. Smith—Lodge 533

Mr. Bernard M. Savage
Legal Counsel

Dear Brother Savage:

On April 15, 1958, I furnished you a report covering the injury of the above member, but to date I have had no further information from you as to the status of this case.

Thanking you for this information at your earliest convenience, I am,

Fraternally yours,

C. R. MAHER, Chief Clerk
Legal Aid Department

CRM:veb

[fol. 753]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 62-A

(Letterhead of Bernard M. Savage, Baltimore 2, Md.)

August 15, 1958

Mr. C. R. Maher, Chief Clerk
Legal Aid Department
Brotherhood of Railroad Trainmen
1370 Ontario Street
Cleveland, 13, Ohio

Re: Clint B. Smith—Lodge 533

Dear Brother Maher:

Wish to advise that Brother Smith has employed the Department to handle his claim, copy of F-LA-2 and contract being enclosed.

Will keep you advised of developments.

Fraternally yours,

/s/ BERNARD M. SAVAGE
Bernard M. Savage

BMS:RT

Enc. (2)

CASES IN THE STATE OF VIRGINIA

<u>Name</u>	<u>Address</u>	<u>Date of Injury</u>	<u>Railroad</u>
Ballance, Selby E.	1105 Cunningham Rd. Norfolk, Virginia	March 29, 1957	N. & W.
Doyle, L. E.	1202 Das Meines Ave. Portsmouth, Virginia	October 20, 1956	N.A.P. Balt Line
Evans, Robert L.	104 E. Oxford Ave. Alexandria, Virginia	June 17, 1956	R. F. & P.
Fahnestock, Leonard	16 E. Ballefonte Ave. Alexandria, Virginia	February 2, 1957	Southern Ry.
Griffin, Wilbur G.	Carrollville, Virginia	November 12, 1956	N. & W.
* Johnson, Edward F. (2 injuries)	703 - 5th Avenue Portsmouth, Virginia	December 12, 1955 August 9, 1956	N.A.P. Balt Line
Kilgore, James H.	408 Spotswood Ave. Norfolk, Virginia	August 15, 1956	N. & W.
* Murphy, Billy O. (2 injuries)	619 London Street Portsmouth, Virginia	December 5, 1955 July 31, 1956	N.A.P. Balt Line
Nethery, Donald	302 George Drive Portsmouth, Virginia	August 22, 1957	N.A.P. Balt Line
Oakes, John R.	875 Halstead Lane Norfolk, Virginia	November 1, 1956	N. & W.
Reynolds, Frank H.	2121 Oregon Ave. Portsmouth, Virginia	May 14, 1956	N.A.P. Balt Line
Wells, Thomas J.	8429 Hillard Street Norfolk, Virginia	February 19, 1958	N. & W.
** Burnett, B. T. (Deceased)	Route # 4, Box 328 Danville, Virginia	November 14, 1958	Southern Ry.

* With the exception of these two injury cases. any cases prior to 1955

[fol. 754]

IN THE CHANCERY COURT OF
CITY OF RICHMOND, VIRG.
PLAINTIFF'S EXHIBIT 67

Norfolk, Virginia			
Boyle, L. E.	1222 Bus Station Ave. Portsmouth, Virginia	October 22, 1956	N.A.P. Balt Line
Swann, Robert L.	104 E. Oxford Ave. Alexandria, Virginia	June 17, 1956	R. F. & P.
Falmestock, Leonard	16 E. Ballafante Ave. Alexandria, Virginia	February 2, 1957	Southern Ry.
Griffin, Wilbur G.	Carroville, Virginia	November 12, 1956	N. & W.
* Johnson, Edward F. (2 injuries)	703 - 9th Avenue Portsmouth, Virginia	December 12, 1955 August 9, 1956	N.A.P. Balt Line
Kilgore, James H.	406 Spotswood Ave. Norfolk, Virginia	August 15, 1956	N. & W.
* Murphy, Billy O. (2 injuries)	619 London Street Portsmouth, Virginia	December 5, 1955 July 31, 1956	N.A.P. Balt Line
Nethery, Donald	302 George Drive Portsmouth, Virginia	August 22, 1957	N.A.P. Balt Line
Oakes, John R.	875 Halstead Lane Norfolk, Virginia	November 1, 1956	N. & W.
Reynolds, Frank H.	2121 Oregon Ave. Portsmouth, Virginia	May 14, 1956	N.A.P. Balt Line
Wells, Thomas J.	6429 Millard Street Norfolk, Virginia	February 19, 1958	N. & W.
** Barnett, B. T. (Deceased)	Route # 4, Box 328 Danville, Virginia	November 14, 1958	Southern Ry.

* With the exception of these two injury cases, any cases prior to 1955 are destroyed.

** Legal Counsel Lewis and Lewis are handling this case. It is filed in Birmingham, Alabama, and is still pending.

[fol. 754]
IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA
PLAINTIFF'S EXHIBIT 67

[fol. 754]

901

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA
PLAINTIFF'S EXHIBIT 67

902

[fol. 755]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 68

October 12, 1949.

#720—WPK:SCL:VN

Mr. Thomas J. Lewis,
Regional Counsel,
727 First National Bank Bldg.
Atlanta 3, Georgia.

Dear Sir and Brother:

Effective October 15, 1949, the letter of former President A. F. Whitney, under date of January 15, 1932, appointing you as regional counsel for the Brotherhood of Railroad Trainmen, and your appointment thereunder as such, are hereby canceled and terminated.

Thanking you for the manner in which you have represented injured members of the Brotherhood, and the dependents of deceased members, since your appointment, I am

Fraternally yours,

/s/ W. P. KENNEDY
President.

cc:
Mr. S. C. Lush, Manager,
Legal Aid Department.

[fol. 756]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 69

(Letterhead of Thomas J. Lewis, Atlanta 3, Georgia)

October 14, 1949

Mr. W. P. Kennedy, President
Brotherhood of Railroad Trainmen
Standard Building
Cleveland 13, Ohio

Dear Brother Kennedy:

This will acknowledge receipt of your letter of October 12, 1949 cancelling and terminating my appointment as Regional Counsel for the Brotherhood of Railroad Trainmen by former President Whitney under date of January 15, 1932.

Fraternally yours,

/s/ THOMAS J. LEWIS
Thomas J. Lewis

TJL:JT

[fol. 757]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 70

October 12, 1949

#720—WPK:SCL:VN

Mr. Thomas J. Lewis,
Regional Counsel,
727 First National Bank Bldg.
Atlanta 3, Georgia.

Dear Sir and Brother:

Because of your experience, and outstanding success in handling cases for our members who have been injured, and for the dependents of those killed while employed on

the railroad, and having full knowledge of your honesty and integrity, I have decided to reappoint you regional counsel for the Brotherhood of Railroad Trainmen, effective October 15, 1949, within the same territory in which you served under your former appointment.

Fraternally yours,

/s/ W. P. KENNEDY
President.

cc:

Mr. S. C. Lush, Manager,
Legal Aid Department.

[fol. 758]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 71

(Letterhead of Thomas J. Lewis, Atlanta 3, Georgia)

October 14, 1949

Mr. W. P. Kennedy, President
Brotherhood of Railroad Trainmen
Standard Building
Cleveland 13, Ohio

Dear Brother Whitney:

This will acknowledge receipt of your letter of October 12, 1949 re-appointing me as Regional Counsel for the Brotherhood of Railroad Trainmen, effective October 15, 1949, with the same territory in which I served under former appointment.

I shall endeavor to represent the members of the Brotherhood in the territory allotted to the best of my ability in the future just as I have in the past.

Should I be able to serve you in any capacity at any time, please feel free to call on me.

Fraternally yours,

/s/ THOMAS J. LEWIS
Thomas J. Lewis

TJL:JT

[fol. 759]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 72

404

THE RAILROAD TRAINMAN

ESTABLISHMENT OF A LEGAL AID BUREAU
AT GRAND LODGE HEADQUARTERS

Under date of January 22, 1930, the President directed a special circular to all subordinate lodges in the United States, which circular was headed "*Shall a legal aid department be established in the grand lodge for the purpose of advising injured members, and the dependents of those killed, as hereinafter provided?*"

In compliance with the instructions contained therein, ballots were returned to the Grand Lodge office, which, after having been tabulated, showed that the Legal Aid Bureau was endorsed by more than two-thirds of the Lodges in the United States.

It is therefore important at this time to give the membership a brief and clear synopsis of the plan so that it may be understood by all of them.

The sole purpose back of this plan is to render aid and assistance to our injured members and their dependent widows and orphans when advice and counsel are most needed. It means the establishment at Grand Lodge headquarters of a Bureau to which injured members and the dependents of those who may be killed while engaged in railroad service may apply for information and advice relative to their rights respecting claims for damages. This Bureau will be conducted under the supervision of the President of the Grand Lodge.

When a member is injured he will be privileged to write to the Bureau furnishing such information relative to his injury as may be necessary to enable the Bureau to determine his rights. The same privilege will be given to the dependents of members, who may be killed in railroad service. Arrangements will be made through the medium of the Bureau with competent and reputable railroad dam-

age suit lawyers at various strategic points in the United States to whom members may resort for advice and assistance in cases where they cannot satisfactorily adjust their claims with the railroads. No charge will be made for advice given by these regional lawyers, except, where the members, of their own volition, contract with the lawyers to prosecute their claims. There will be no obligation on the part of any member of the Brotherhood to consult or employ lawyers agreeable to the Legal Aid Bureau. They are free to employ any other lawyer if they desire.

Arrangements will be made with lawyers in the various localities covering the amount to be charged for their services, which will not exceed twenty per cent of the net amount of any recovery which may be made by the lawyers on behalf of the injured men, or the dependents of one who has been killed. In cases where investigations must necessarily be made before passing upon the question of liability, the Legal Aid Bureau will undertake to make the necessary investigations; such investigations will be made by men employed by the Brotherhood for that purpose.

In the minor injury cases, railroads usually pay for time lost and it is our conviction that it is better to accept such settlements than to employ lawyers. In cases where the disability is not permanent and the member is able to return to his employment, it is our belief that every effort should be made to bring about amicable settlements with the railroad company. We believe that a policy of attempting to reach fair settlements with the railroads by keeping injury cases out of the hands of the lawyers will in the end benefit the employees and improve existing conditions with respect to the settlement of injury claims.

In cases where employees are permanently injured so that they cannot return to their former occupation, it is expected that every fair and reasonable effort will be made to adjust claims for damages direct with railroads, either by the injured member himself or through the medium of his chosen representative among the officers and members of the Brotherhood.

The Legal Aid Bureau is now prepared to render service and give opinions to all members in the United States

through the medium of correspondence. All inquiries should be addressed to Tom J. McGrath, General Counsel, B. of R. T. Bldg., 820 W. Superior Ave., Cleveland, Ohio.

As rapidly as it is possible to do so, consistent with the proper handling of other Brotherhood business, regional counsel will be arranged for in the various sections of the country. Regional counsel have been selected and arrangements made for their services, as follows:

For the northwesterly territory, Davis, Michel, Yaeger & McGinley, with offices at 419 Metropolitan Bank Bldg., Minneapolis, Minn., and at 1048 Otis Bldg., 10 So. La Salle St., Chicago, Ill.

For the Chicago district and adjacent territory, Jos. D. Ryan, 100 No. La. Salle St., Chicago, Ill.

For Ohio and adjacent territory, Newcomb, Newcomb & Nord, 1528 Standard Bank Bldg., Cleveland, Ohio.

Davis, Michel, Yaeger & McGinley will serve our membership on the following lines and portions of lines of railroads:

Chicago, Milwaukee, St. Paul & Pacific (East and West)
C. B. & Q.

Soo Line

Chicago Great Western

Minneapolis & St. Louis

Great Northern

Chicago Northwestern

Northern Pacific

D. & I. R.

Minnesota & International

Green Bay and Western

D. S. S. & A.

D. M. & N.

D. W. & P.

Illinois Central (north of the Ohio River)

Rock Island (except south and west of the northern boundary of Oklahoma)

Jos. D. Ryan will serve our membership in all of the lodges in the State of Illinois, except the members employed on lines over which the following lodges have jurisdiction, which lines have been assigned to Davis, Michel, Yaeger & McGinley:

C. B. & Q.	Lodges 6, 412, 479, 372, 24, 617, 150, 25, 940
C. & N. W.	Lodges 310, 375, 424, 874, 364, 931
L. C.	Lodges 116, 700, 271, 4, 198, 900, 41, 115, 372, 629, 789
C. & St. P.	Lodges 531, 119, 877, 474, 838, 91
M. & St. L.	Lodges 830, 27
B. I.	Lodges 4, 198, 474, 617, 11, 198
C. G. W.	Lodge 479
Soo Line	Lodges 479, 239

and the following lodges in the western part of the State of Indiana, westerly on a line almost directly north and south from Elkhart, Ind., to Jeffersonville, Ind., have been assigned to Mr. Ryan:—

615, 883, 23, 242, 326, 960, 962, 402, 109, 926, 982, 16, 361, 165 and 146.

Jos. D. Ryan will also serve our membership on the following lines in the State of Michigan—Pere Marquette from Lansing to Chicago east, and from Lansing on a line north to Saginaw and Bay City; the Pere Marquette excepting a line from Cleveland to Detroit; the Pennsylvania from Chicago to Sturges and north to Mackinaw and the Grand Trunk Line.

[fol. 760] Newcomb, Newcomb and Nord will serve our membership in all lodges in the States of Ohio and West Virginia and the following lodges in the easterly part of the State of Indiana:

318, 136, 762, 158, 55, 261, 374, 699, 689, 33, 575, 207 and 126.

All of Ann Arbor, Michigan Central, and the Pennsylvania from Toledo to Detroit and the Pere Marquette from Toledo to Detroit in the State of Michigan.

Membership in lodges in that portion of western Pennsylvania lying west of a line running north and south through Altoona.

142, 955, 980, 105, 456, 179, 299, 309, 775, 808, 863, 944, 948, 462, 566, 558, 521, 184, 974, 63, 435, 174, 467, 742, 534, 573, 461, 703, 591, 571, 719, 561, 386, 218, 632, 593, 258, 199, 457, 345, 753, 954 and 231.

Membership in the following lodges in the State of Kentucky:

494, 903, 958, 932, 908, 156, 839 and 806.

It is to be understood that there is no compulsion on the part of the members to seek advice or assistance or to make contracts with the lawyers to whom the particular lodges hereinbefore set forth have been assigned. We believe, however, that the best interest of the plan will be served by the membership confining themselves to the selection of these lawyers, although it is optional for reasons of choice or convenience to select any regional counsel.

Because of the fact that Indianapolis is practically equal distance from Chicago and Cleveland, it is made entirely optional with the membership of these lodges to call upon Mr. Ryan or Messrs. Newcomb, Newcomb, & Nord.

The following are rules and regulations agreed upon between regional counsel and the Legal Aid Bureau to govern the conduct and handling of Brotherhood matters by such counsel.

Regional lawyers will be selected in various railroad centers of the United States, with a view of rendering the service contemplated by the establishment of the Legal Aid Bureau with the greatest degree of efficiency, keeping in mind the convenience of members and total membership in a given district, so as to give the regional lawyers a reasonable assurance of a sufficient volume of Brotherhood business to warrant the rendering of proper service on the basis of compensation agreed upon. The allocation of territory will not be predicated solely on geographical lines, but rather on railroad lines, that is to say, each regional lawyer will be given jurisdiction over so many miles of track on each railroad running into his territory.

When the regional lawyers are selected, and from time to time thereafter, articles will be published in The Railroad Trainman informing members of the services rendered by the Legal Aid Bureau and advising them also of the names and addresses of the regional lawyers.

When members are injured, either they or proper members of their grievance committees or subordinate lodge officers acting on their behalf, or, in case of the accidental

death of members, their dependents, may write or call on the Legal Aid Bureau for information and advice as to their legal rights. They will be required to furnish, as nearly as possible, a full and complete statement of all of the facts surrounding the accidental death or injury. This will include written statements of witnesses, whenever and wherever obtained. Injured members will be required to furnish statements from medical examiners where there is any question as to the nature or extent of the disability.

In all major injury or death cases, upon request of the injured man or dependent or an officer of the Brotherhood authorized to represent the claimant, an investigator, employed by the Legal Aid Bureau, will be assigned to investigate and ascertain the facts surrounding the accident or death. Reports of such investigations will be filed with the Bureau and when any such cases are referred to or brought to the regional counsel, copies of such reports will be sent to them. The Bureau will endeavor to provide means for securing promptly after the occurrence of all accidental injuries or deaths, the names and addresses of the injured members or dependents, as well as the character of the injury, so that the claimants may be expeditiously informed that the services of the Bureau and the regional counsel are at his or her disposal.

Members and their dependents upon request therefor will be advised as to the best course to pursue, in the judgment of the Legal Aid Bureau, to effect a settlement, including advice as to what amount in the judgment of the Bureau would constitute a fair settlement of the claim. The affairs of the legal department will be conducted with the thought in mind primarily of encouraging amicable settlements in all cases.

Requests for information and advice in minor injury cases will be discouraged in order to prevent the burden imposed on the Legal Aid Bureau from becoming unduly heavy and thereby unreasonably expensive.

In cases where close questions of liability are involved and intricate detailed information is essential to a proper determination of a member's rights, he may be referred to the regional attorney of his district. It will be the duty

of this attorney to counsel with and advise the injured member without charge with a view to enabling him or his Brotherhood representative to effect a fair settlement. The Legal Aid Bureau will insist that regional lawyers in such cases advise members solely with a view to promoting the best interest of the members. Any overreaching on the part of regional lawyers intended to induce members to sign contracts of employment will be discountenanced. Succinctly, the Legal Aid Bureau will expect the regional lawyers to advise members of the Brotherhood in exactly the same way as they would advise a client who paid for legal advice.

The Bureau will endeavor, through the medium of The Railroad Trainman and circulars periodically sent to officers and lodges, to keep the membership of the Brotherhood advised as to the names and addresses of regional counsel in their respective districts. It is anticipated that members and dependents, or lodge officers representing them, may go direct to regional counsel for information and advice and all such cases will be handled by regional counsel in the same manner as if referred to them by the bureau. In any such cases, where major injuries are involved, a bureau investigator will, at the request of the regional counsel, be assigned to investigate such cases, making a report in duplicate, one copy to the regional counsel and one copy to the bureau.

In cases where members have exhausted their efforts in attempts to procure settlement, they will be referred to regional attorneys with whom contracts may be made for the prosecution of their claims. It must be understood that the Brotherhood cannot undertake to control the actions of members in this regard, and that they will remain free to employ attorneys of their own choice. It is felt, however, that if the Brotherhood selects attorneys of outstanding ability in their particular field of endeavor, that fact, together with the further fact that contracts will call for compensation substantially below that now charged for like service, will be a sufficient inducement to attract a great majority of our members to regional counsel. Where it becomes necessary for members or their dependents to employ counsel, contracts, to be approved as to form by the

Legal Aid Bureau, will be entered into by regional counsel and claimants, calling for payment by the claimant of a contingent fee of twenty per cent of the net amount recovered in suit or settlement.

Regional attorneys will be required to report all cases handled by them in which a contract has been entered into with members of the Brotherhood, setting forth a statement of the facts involved, together with the amount of settlement or verdict received. The legal department shall be furnished with itemized statement of costs and disbursements, and the deduction of same from recoveries will be subject to the approval of that department.

Regional counsel will be privileged to advise with the Legal Aid Bureau on questions of law, and it will be the policy of the department to disseminate information gathered from the several regional districts among all of the regional counsel of the Brotherhood from time to time.

It will be understood that members will have control of their cases in the hands of regional attorneys, and that [fol. 761] no settlement of any case can be made without the consent of the client.

While the membership will be advised as to the names and addresses of regional counsel for their particular line of railroad, it will be impossible to control their choice of attorneys and each member or dependent will have the option, either for reasons or choice or convenience, to consult with or employ any regional counsel.

In the drafting of the above outline it must be appreciated that the work upon which we are about to engage is more or less experimental in character, and that original plans will unquestionably have to be modified from time to time as occasion warrants. Changes or modifications of these plans will be subject to negotiation as between the Legal Aid Bureau and regional counsel.

At the outset, in order to serve as many members as possible, the territories will perhaps be exceptionally large, but as additional regional counsel are selected there will be a realignment of territories to promote the greater convenience of members who wish to consult regional counsel.

In territories not already assigned and not in the jurisdiction allotted to Minneapolis, Chicago and Cleveland

counsel, the bureau will endeavor to render service to the members through correspondence to the best of its ability until regional counsel have been selected to cover the entire United States, which will be accomplished as early as possible.

The Legal Aid Bureau will be glad to answer all inquiries relative to the plans and purposes of the Bureau and any members desiring any additional information on this subject may address their inquiries to Tom J. McGrath, General Counsel, 820 W. Superior Ave., Cleveland, Ohio.

TOM J. McGRATH,
General Counsel.

Approved

/s/ **A. F. WHITNEY**
President of B. of R. T. [SEAL]

[fol. 762]
734

THE RAILROAD TRAINMAN
December 1936

YOUR LEGAL AID DEPARTMENT

By **S. C. LUSH**, Vice-Chairman Minnesota Legislative Board
The Legal Aid Department was instituted because thousands of our members, injured while on duty, or dependents of those killed in service, were not receiving compensation commensurate with their legal rights.

While this had been going on for many years, President Whitney is the first and only labor leader among the Railroad Brotherhoods to take steps toward protecting the membership of an organization in this respect.

President Whitney realized it was not enough that the railroad labor organizations had been successful in having laws enacted to protect their injured members and the widows and children of those killed. He perceived that in order to secure the benefits of these laws, a department would be necessary in our organization whose duty would

be to advise our members of their rights under the laws. He also saw that in order to advise them correctly, all the facts surrounding the accident must be known, because the investigation held by the railroad company does not always develop all the facts, and that for this work it would be necessary to have men trained to conduct a separate investigation from that conducted by the railroad company.

The purpose of the department is to advise our members of their rights under the law, so that in order to learn the value of their case they will not have to depend upon the lawyer who sees only his fee or the claim agent who is trying to settle the claim as cheaply as possible.

The object of the department is to help the injured member settle directly with the railroad company, if possible. The department wants the injured member to know what is a fair settlement after all of the facts have been developed, and to do this the department has contracts with reputable attorneys, specialists in this particular branch of law, who have a reputation for honesty and fair dealing, to counsel members without charge, and in the event their legal services are required because the railroad company failed to make a fair offer, to handle their case for a reasonable fee.

It was not uncommon for some attorneys or their agents to approach an injured member and induce him to sign a contract of retainer even before the injured man knew the extent of his injury. As a result of this practice, many of our members have lost twenty or more years seniority and received little if any more money than they could have gotten direct from the railroad company.

In one instance, a member who was No. 1 on the seniority list of a railroad, sustained an injury to one of his feet. After the claim agent had offered him one-half time, he turned his case over to a lawyer who brought suit in his behalf but settled the case for all it was worth under the law before it went to trial. However, the amount was small because the trainman had fully recovered at the time of the settlement and could have resumed his former occupation. When the lawyer took the case, he told this member that it was one of clear liability. This was true, but the lawyer failed to tell the injured man that the amount he could col-

lect under the law was only the amount of the wages lost due to the injury, plus something for the pain and suffering he had endured. As a consequence, this member received, net, to himself, little more than the amount offered him by the railroad company and he lost approximately twenty-five years seniority. It is true that the claim agent did not make him a fair offer; however, any reputable lawyer would have told him that his seniority was worth more to him than the small amount he could recover over and above the amount offered for the reason that his injury was not permanent.

President Whitney also discovered that many members of our organization, or their dependents, were accepting a fractional part of what they were entitled to under the law. One such case is recalled where one of our members lost his hand while attempting to make a coupling. This man was employed as a switchman. He had backed his train of five cars in on a track to pick up other cars. When the cars were about two car lengths apart he observed that both knuckles were closed. As the cars were moving slowly, he walked to the stationary car and raised the pin-lifter. The pin came up, but the knuckle failed to open. With both hands he then jerked repeatedly on the pin-lifter. Each time he did so, the pin came up but the knuckle did not kick open sufficiently so that he could effect a coupling. When he saw that he could not open the knuckle in the usual and customary way, he held the pin-lifter up with his left hand and stepped between the cars, pulling the knuckle open with his right hand. By this time the cars came together, crushing his right hand so badly that amputation was necessary. Under the Federal Employers' Liability law and the Automatic Coupler law, this man, engaged in interstate commerce, had a clear liability case, for the reason that the defective coupler was directly responsible for his injury. The Automatic coupler law provides, in effect, that cars and engines must be equipped with automatic couplers which will couple automatically by impact and uncouple without the necessity of a trainman going between the ends of the cars. In other words, if it is necessary to go between the ends of the cars and adjust the draw-bar or knuckle, or any part of the coupling apparatus, in order to effect a coupling

or to uncouple cars, the company has violated the coupler law by allowing such a condition to exist. Even though the man may have violated a company rule by going between the ends of moving cars, the railroad company is not permitted to hide behind this act if an injury occurs because of its failure to comply with the provisions of the Automatic Coupler law, as it was the carrier's failure to comply with the law which caused him to violate the rule. A few days after this accident and while the injured man was in great pain, the claim agent insisted upon taking a statement as to how the accident had occurred, and the injured man told his story to the claim agent as given above. In writing up the statement, however, the claim agent conveniently omitted some of the facts as given by the injured man, claiming that they had no bearing upon the case and that he only wanted a statement as to what took place at the moment of the accident. The parts which he conveniently left out of the statement were the facts that the injured man had pulled repeatedly on the pin-lifter and that while the pin had raised, the knuckle had failed to open. The claim agent wrote into the statement only the fact that the injured man had raised the pin-lifter with one hand and pulled the knuckle with the other. This, of course, did not tell the true story, as there was nothing to show that when the trainman had attempted to operate the coupler in the ordinary and usual way, the knuckle failed to open. He made it appear that the yard man had simply gone to the end of the car, raised the pin-lifter with one hand, and pulled the knuckle open with the other, without giving it an opportunity to work in the ordinary and usual way. When the claim agent asked whether or not there was anything broken about the coupler, the injured man stated that there was not, so the claim agent wrote into the statement that there were no defects to the draw-bar or coupler. The injured trainman signed this statement, not knowing that when the coupler failed to operate when manipulated in the ordinary and usual way, it was defective under the Automatic Coupler law. The claim agent later offered this member \$2,500 as a settlement and after several months' negotiations he failed to increase this offer, stating that the [fol. 763] railroad company was in no way to blame and that the injured man should not expect a larger settlement.

Fortunately, this brother contacted one of our Regional Counsel and his case was settled out of court for an amount many times the \$2,500 offered by the railroad company.

It is because of similar cases occurring almost daily, that this department of the Brotherhood is so necessary. Few of our members understand their rights under the laws governing them in the event of injury. Then, too, not many of our members understand that under the Federal Employers' Liability law, it is necessary to prove that the injury or death of an employee was caused through the fault of the railroad company or its employee, or by defective equipment, before the railroad company can be held legally liable. Not many of them know that if the railroad company is at fault, the only limit upon the amount they can recover is the amount that can be shown has been lost to them as a result of the injury, or, in the event of death, the present value of the amount the dependents would have received during his lifetime had he lived, if the man injured or killed was engaged in interstate commerce, at the time of the accident, or met with his accident in a state having a liability law, patterned after the Federal Act.

It is because of the fact that you must prove the railroad company guilty of fault before it can be held liable under this law that it is so necessary to have the accident investigated by one who understands railroading, as well as the law, as the opinion of an attorney is valueless unless he has all of the facts before him, and then the opinion of an attorney is usually of little value unless he is one who is a specialist in this type of litigation.

Many times it is found that the facts developed by the railroad company do not prove to be all of the facts surrounding the case, but are only such facts as will tend to show the company is in no way to blame for the injury. As an illustration, one of our members was killed and the railroad company claimed that his injury and death was caused through his own fault and negligence in failing to set a brake. Later, the Legal Aid Department developed the fact that he could not set the brake because it was defective and he had so stated shortly after his injury. The railroad company had offered the widow \$1,500 in settlement, but a few months later, after the case had been investigated and all

of the facts developed, and within thirty days of the time she turned her case over to one of our Regional Counsel for adjustment, that same railroad paid, before trial, \$14,500 in settlement, and this was only because they knew that the Legal Aid Department had learned all of the facts of the accident.

In another case, a brother lost part of his foot while pushing over a draw-bar. He was offered \$2,500 in settlement. The railroad company claimed the draw-bar was not out of line and that the coupling would have been made if he had left it alone. This brother did not remember having seen any one near the scene of the accident who would know about the condition of the draw-bar, but the department, upon making investigation, learned of an eye-witness who corroborated the injured brother's statement and proved beyond doubt that the draw-bar was out of line, and in this case, when the railroad company found that all of the facts were known, it settled the case, before trial, for \$12,500.

A sister organization which claims to represent train and yardmen, is now starting a Legal Aid Bureau, and I am told that they are appointing regional counsel who are to advise their general chairman and injured members. However, it has no investigation division; presumably it will advise them on the facts developed by the railroad company. Such a department will be like a nice new automobile, without gas; nice to look at, but it will not take them any place.

There has been some opposition to our department by some of our members, but I am sure it was only because they did not understand its purpose. Remember, brothers, this department is not interested in lawyers or suits against railroads; its whole object is to help injured members or the dependents of those killed to make a fair settlement directly with the railroad company, if possible; if not, to see that they have an opportunity to obtain honest, reliable and competent attorneys; and the department conducts an investigation of the facts surrounding an accident to an injured member without cost to the member, and then, through its Regional Counsel, advises you as to whether or not you have a liability case under the law, and, when all of the facts are taken into consideration, what would be a fair

settlement. Then you are at liberty to settle your case for any amount you desire. You will be armed with knowledge of your rights, given to you by those who have a personal interest in you and who are only interested in helping you get a square deal.

Should you be so unfortunate as to sustain an injury while on duty, be sure to see that your local lodge officers make a report to the Legal Aid Department in Cleveland.

[fol. 764]

LUSH EXPLAINS BRT WORKINGS TO PA. MEMBERS

[Stamp—Dec. 18, 1948]

Wilkes-Barre, Pa.—One hundred ten officers of lodges in Northeastern Pennsylvania learned the ins and outs about workings of various departments of the Brotherhood at a recent largely attended banquet in Hotel Reddington here.

Bringing the valuable information to the BRT leaders was S. C. Lush, manager of the Legal Aid Dept. at Grand Lodge.

Lush also gave a complete explanation of Legal Aid Dept. machinery and pointed out the value of its services to Brotherhood members.

He urged members to use services of the LAD and discussed the many benefits thousands of BRT-ers have received since President Whitney authorized establishment of the department 18 years ago.

[fol. 765]

WINS \$35,000 INJURY AWARD; PRAISES BRT

[Stamp—Aug. 1, 1948]

Reading, Pa.—Frank K. Michael, Lodge 950, can't find words to express his appreciation of the BRT and its Legal Aid Department.

Recently he received a check for \$35,000 plus interest in settlement of an injury case that had been carried to the U. S. Court of Appeals.

He was injured in February, 1947, while backing out of an engine and preparing to get off. His overcoat caught on something on a car on an adjacent track and Michael sustained several fractured ribs and a fractured right hip.

First awarded the \$35,000 in Philadelphia, the railroad's attorneys moved to set aside the verdict, and were denied. Then the road went to the U. S. Court of Appeals, again to be denied, with the award being made in May, 1949, for Michael.

Michael has great praise for the expert handling of his case in courts.

[fol. 766]

BLACK ADDRESSES LODGE GATHERING

Salt Lake City, Utah—Know your Legal Department, was the theme of a BRT gathering recently, when Lodges 471 and 941 were addressed by Parnell Black, legal counsel, with Stan Nokes, legal aid investigator, acting as MC.

The legal counsel did not mince words when he addressed the assembly, stressing the importance of consulting the legal aid department instead of heeding the "sympathy" of the claim agent.

O'BRIEN WINS HONOR

[Stamp—May 21, 1951]

Boston.—Thomas C. O'Brien, regional counsel, has recently been elected president of Massachusetts Association of Plaintiff's Compensation Attorney, a highly cherished honor among attorneys.

O'Brien, Lodge 486 member, recently received his 40-year pin. He has been New England regional counsel since 1930.

[fol. 767]

A. M. OLIVER JOINS HENSLEE'S OFFICE

[Stamp—Nov. 21, 1949]

Pittsburgh—Regional Counsel E. B. Henslee has announced that Mr. A. M. Oliver will handle the short line railroads in the Pittsburgh area for his office.

Mr. Oliver, whose offices are at 402 Walsh Building, 434 Diamond Street, Pittsburgh, replaces James P. McArdle, who formerly handled the short line railroads.

Mr. Oliver has long experience in handling personal injury cases under Federal Employers' Liability Act, and has had many cases against the short lines.

He will be available to all BRT-ers on short lines for advice as to rights under FELA, and to handle claims for injuries sustained during their employment.

His office will be happy to advise members in the Pittsburgh area, whether they are employed on short or trunk lines, as to their rights under FELA, said Mr. Henslee.

LUSH SPEAKS AT FISH FRY IN VICKSBURG

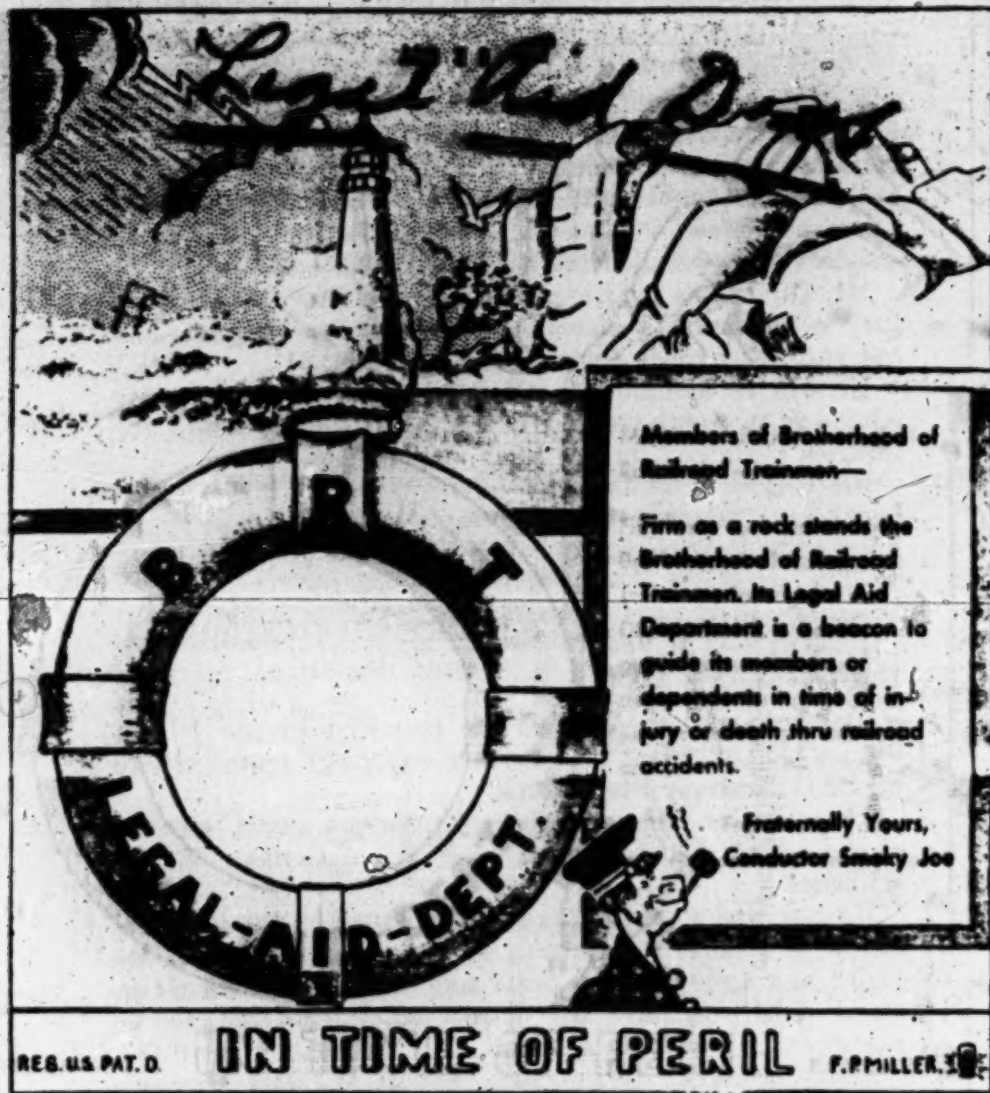
[Stamp—May 7, 1951]

Vicksburg, Miss.—The service provided by the BRT's legal aid department was thoroly explained recently here by LAD Manager Steve Lush.

The popular Grand Lodge official was guest speaker at the annual fish fry given by Regional Counsel W. W. Ramsey.

He repeated a warning frequently issued by the Brotherhood—be sure to notify your local lodge secretary of injuries and accidents and don't talk to any railroad claim agent until you have first consulted a legal aid representative.

Judge Bently G. Byrnes and William W. Ramsey, associates of Regional Counsel Ramsey were special guests at the big event.



PHILIP LUSH JOINS BRT LAW COUNSELS

[Stamp—July 13, 1949]

Minneapolis—Attorney Philip B. Lush, son of S. C. Lush, manager of the Legal Aid Department at Grand Lodge, recently was named a member of the law firm of Davis, Michel, Yaeger and McGinley, Brotherhood counsels in this city.

[fol. 769]

THREE BRT-ERS WIN \$172,000 INJURY AWARDS

[Stamp—Apr. 9, 1949]

Three settlements—two of them made just as they were to come to trial—netted three BRT-ers \$172,000.

One for \$120,000 was among the highest ever received from a railroad for a personal injury.

Joseph Yesavage, Lodge 846, who lost both legs working as a Lehigh Valley yard helper in the Oak Island, Newark, N. J., yards, got \$120,000 when date was set for trial in New York eastern district federal court.

Regional Counsel B. M. Savage reports the case was set for trial when the railroad showed unwillingness to settle for a substantial amount, and the agreement came thru when the carrier saw the case would be heard.

**S. LUSH DECLARES MEMBERS FAVOR
LEGAL AID DEPT.**

[Stamp—Apr. 9, 1949]

Chester, Pa.—Altho antagonism sprung up against the Legal Aid Department at its inception the members now strongly favor the department's entire program.

S. C. Lush, LAD manager, made that statement in an address recently at the 27th annual banquet of Lodge 488.

McGLYNN BACK ON JOB

[Stamp—(Month and day illegible) 1949].

East St. Louis—Regional Counsel Joseph B. McGlynn is back in the harness after a long siege of illness.

[fol. 770]

LUSH RETIRES FROM LEGAL AID MANAGER POST

[Stamp—June 30, 1952]

S. C. (Steve) Lush, manager Legal Aid Department, whose tireless efforts brought the department from threatened extinction to its present highly successful status, has retired from the post.

In accepting his resignation, President W. P. Kennedy praised the fine work of Lush and wished him full enjoyment of his retirement.

President Kennedy, acknowledging the resignation, wrote Lush the following letter:

"Under your management, the Legal Aid Department of the Brotherhood has become one of the very important departments of the Brotherhood and has resulted in our injured members and the dependents of deceased members receiving millions of dollars which they would not have received had the department not functioned in the very efficient manner in which it has since you took over the management in 1939."

WHEN ARE RRs LIABLE?

[Stamp—Mar. 3, 1952]

Sandusky, Ohio—Thomas Klein, Lodge 844, asks Trainman News for information, for the benefit of all members, with reference to the question of the legal liability of a railroad company where its employe is transported by taxicab to or from a place of work and an accident occurs in which such employe is injured or killed.

Brotherhood attorneys advise that, in general, a railroad company cannot be held liable for the negligence or the acts of a third party. In the case cited, the taxicab company would be the third party and would be liable, under the general laws and court decisions of the state, for any negligence of which it might be guilty, if such negligence contributed to the injury or death. This assumes, of course, that there was no negligence or act of the railroad in connection with the injury or death, other than the hiring of the taxicab.

Attorneys advise, however, that where the railroad company furnishes an automobile, driven by one of its employes, for the purpose of transporting its employe in the course of his employment, then such railroad would be liable for injury or death occurring during the transportation of the employe, under the provisions of the Federal Employers Liability Act.

[fol. 771]

McELROY HAILS NEW YORK MEETING

[Stamp—Sep. 29, 1952]

Cleveland—•••

Regional Counsel McElroy addressed several meetings during the convention in Watertown and also was seated at the speakers' table at the banquet honoring President W. P. Kennedy.

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[fol. 772]

RAWLINGS IS NAMED REGIONAL COUNSEL

[Stamp—Sep. 24, 1951]

President Kennedy has announced appointment of Calvin W. Rawlings as regional counsel at Salt Lake City, with the same territory formerly assigned to Parnell Black, who died recently.

Mr. Rawlings is senior member of the firm of Rawlings, Wallace, Black, Roberts & Black. During the time Mr. Black was regional counsel, Mr. Rawlings was in close touch with the many cases handled for injured BRT-ers and dependents of deceased members.

This appointment assures our members of the same fine, expert service they received during the many years when Parnell Black was regional counsel, said S. C. Lush, manager Legal Aid Department.

Mr. Rawlings is located at 530 Judge Building, Salt Lake City 1, Utah.

[fol. 773]

E. A. RERAT JOINS BRT COUNSEL FIRM

[Stamp—July 23, 1951]

Minneapolis—Regional Counsel Tom Davis has announced that Eugene A. Rerat, one of the outstanding Minnesota lawyers specializing in the handling of claims for injured railroad employees, has joined the firm.

Effective July 16, 1951, the new firm name is Davis, Rerat, Yaeger and Lush and as a result BRTers in the territory assigned to Minneapolis regional counsel are assured the same high-type representation for the future as has been available to them for many years in the past.

Mr. Berat has for many years devoted practically all of his time in the trying of cases for injured railroad employes and the dependents of deceased rail employes which have been referred to him by other attorneys not specialists in this particular field.

He will now, of course, devote his entire time to cases handled by Minneapolis regional counsel.

URGES REPORT OF MAJOR AND MINOR INJURIES

[Stamp—June 12, 1950]

Vicksburg, Miss.—Every case of injury, whether major or minor, should be reported to the Legal Aid Department.

Minor injuries often develop into serious disability, explained Judge W. W. Ramsey, regional counsel, and cause great loss of time and sometimes permanent injuries result.

He was addressing a gathering at his Eagle Grove fishing lodge, where BRTers from Louisiana and Mississippi had come to hear Legal Aid matters discussed, and enjoy the fishing and picnicking available at the lodge.

Legal Aid Manager S. C. Lush also addressed the gathering. Other guests included C. N. Hope, Arkansas state representative, and J. L. Pierce, member Grand Lodge Executive Board.

Judge Ramsey explained that the LAD existed solely for the protection of members, and urged them to remember that in the event the local or general grievance committee could not secure a fair and satisfactory settlement, they were at liberty to refer the claim to LAD for handling.

[fol. 774]

LEGAL AID ACTIVITIES DISCUSSED AT PARLEYS

[Stamp—July 5, 1954]

St. Louis—C. R. (Bob) Maher, chief clerk of the Legal Aid Department at Grand Lodge, discussed work of the LAD at conferences here recently with two of the BRT's newest legal counsel—Jack H. Haley Jr. and Dan McGlynn.

Following the death of Joseph B. McGlynn, late BRT legal counsel in this area, Haley was appointed Brotherhood legal counsel by President W. P. Kennedy, effective Jan. 20, 1954.

Dan McGlynn, a brother of the late Joseph B. McGlynn, was appointed BRT legal counsel by President Kennedy, effective May 1, 1954. He has made application for BRT membership in Lodge 395.

[fol. 775]

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ILL. SUPREME COURT LEGALIZES, APPROVES THE LEGAL AID DEPT.

[Stamp—Jun 9 1958]

Cleveland—In a notable decision handed down at Springfield, Ill., on May 23, the Illinois Supreme Court, consisting of seven judges, unanimously placed its stamp of approval on the legal aid program of the Brotherhood of Railroad Trainmen.

Specifically, the court held that the Brotherhood itself must maintain the Legal Aid Department without contributions from attorneys in connection with the procurement of cases.

In effect, this long pending decision was a major victory for President W. P. Kennedy, who had sought through Edward B. Henslee, general counsel of the Brotherhood, to have the court define precisely what the Legal Aid Department of the Brotherhood can and cannot do in protecting the rights of an injured member or of the dependents of a deceased member killed in the service of a railroad.

In its decision, the court reviewed the long and successful history of the Brotherhood's legal aid program since it was established in 1930. It noted the question that had been raised concerning the attorney relationship and observed that "the Brotherhood has frankly and openly placed its problem and its own solution of it before the court and asked for guidance."

The court then added: "We think, therefore, that it is appropriate to indicate in broad outline what the Brother-

hood may do with respect to the injury and death claims of its members . . .

"The Brotherhood has a legitimate interest in investigating the circumstances under which one of its members has been injured. That interest antedates the occurrence of any particular injury.

"We are of the opinion that the Brotherhood may properly maintain a staff to investigate injuries to its members. It may so conduct those investigations that their results are of maximum value to its members in prosecuting their individual claims, and it may make the reports of those investigations available to the injured man or his survivors . . .

"The Brotherhood may also make known to its members generally, and to injured members and their survivors in particular, first, the advisability of obtaining legal advice before making a settlement and second, the names of attorneys who, in its opinion, have the capacity to handle such claims successfully . . . No financial connection of any kind between the Brotherhood and any lawyer is permissible. No lawyer can [fol. 776] properly pay any amount to the Brotherhood or any of its departments, officers or members as compensation, reimbursement of expenses or gratuity in connection with the procurement of a case . . . The relationship of the attorney to his client must remain an individual and personal one . . ."

The court added that such a course, if adopted, "will make it possible for the Brotherhood to achieve its legitimate objectives without tearing down the standards of the legal profession."

In setting forth this ruling, the court held that the Brotherhood should be permitted until July 1, 1959 to complete a reorganization of the Legal Aid Department, consistent with these standards.

President Kennedy expressed his complete satisfaction with the court's declaration. He announced that he would call a meeting sometime within the near future of all regional counsels and also the legal aid representatives of

the Brotherhood to formulate and adopt such rules and regulations as may be needed in order to comply with the court's ruling.

President Kennedy pointed out that this is possibly the first time in labor history that a union has voluntarily gone into court and requested the court for a definition of its rights in matters of this nature.

WPK NAMES R. E. McGLYNN LEGAL COUNSEL

East St. Louis, Ill.—Attorney Robert E. McGlynn Jr. was appointed a BRT legal counsel on Oct. 1 by President W. P. Kennedy.

A member of Lodge 372, he is the son of the late Attorney Robert E. McGlynn Sr., and nephew of BRT Legal Counsel Dan McGlynn and the late Joseph M. McGlynn Sr., a former BRT legal counsel.

Currently an assistant to the Illinois attorney-general, the 34-year-old McGlynn is also attorney for the East St. Louis Park District.

McGlynn, who maintains his offices with Dan McGlynn at 120 N. Main St., is a member of the East St. Louis, Illinois State and American Bar Associations.

[fol. 777]

LODGES 52, 369 HONOR LEGAL COUNSEL SCHMIDT

[Stamp—Oct 31 1960]

San Antonio, Tex.—A great open meeting to honor George L. Schmidt, appointed legal counsel Sept. 1 by President W. P. Kennedy was held by Lodges 369 and 52, assisted by Auxiliary Lodges 264 and 5.

Inspiring talks on legal aid matters were delivered by Robert B. O'Connor of Lodge 369 and Legal Counsel Schmidt.

Schmidt announced the opening of an office in San Antonio with O'Connor in charge.

[fol. 778]

PRESIDENT KENNEDY APPOINTS McARDLE BRT LEGAL COUNSEL

[Stamp—Mar 7 1960]

Cleveland—President W. P. Kennedy has appointed James P. McArdle of the law firm of McArdle, Harrington & McLaughlin, Pittsburgh, Pa., as a BRT legal counsel. The appointment was effective March 1, 1960.

Legal Counsel McArdle will handle legal matters for the BRT in the western Pennsylvania area.

He was formerly associated with late BRT General Counsel Edward B. Henslee.

A native of Pittsburgh, where he was born in 1909, Attorney McArdle was awarded a bachelor of science degree in economics by Duquesne University in 1929 and a bachelor of laws degree by the same university in 1931.

O'BRIEN IS NAMED LEGAL COUNSEL

[Stamp—May 9 1960]

Cleveland—Attorney Cornelius C. O'Brien Jr. has been appointed a BRT legal counsel by President W. P. Kennedy, effective May 1, 1960.

The new legal counsel, whose offices are at 316 Three Penn Center Plaza, Philadelphia 2, Pa., will represent the Brotherhood in any legal matters in the eastern Pennsylvania area.

Legal Counsel James P. McArdle will continue to represent the BRT in the western Pennsylvania area. His appointment by Mr. Kennedy took effect April 1. Mr. McArdle's headquarters are in the Frick Building, Pittsburgh 19, Pa.

President Kennedy said that BRT officers and members in Pennsylvania soon will be notified as to the specific areas in which Legal Counsel McArdle and O'Brien will serve.

[fol. 779]

A. S. DOMBEY IS APPOINTED LEGAL COUNSEL

[Stamp—Aug 29 1960]

Cleveland—President W. P. Kennedy has announced the appointment of Alex S. Dombey as BRT legal counsel in the State of Ohio, effective Sept. 1. He will represent the Brotherhood in all legal matters.

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SCHMIDT, HELM NAMED BRT'S LEGAL COUNSEL

[Stamp—Sep 19 1960]

Cleveland—George L. Schmidt and Shirley M. Helm have been appointed legal counsel for the BRT in the state of Texas, President W. P. Kennedy has announced.

The appointments, which became effective Sept. 1, were made after the recent untimely death of veteran BRT Legal Counsel W. States Jacobs Jr., in Houston, Tex.

Schmidt and Helm will represent the Brotherhood and its members or the President of the Brotherhood in the state of Texas when authorized to do so.

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[fol. 780]

**PRESIDENT KENNEDY NAMES LEGAL COUNSELS
IN THREE TERRITORIES**

[Stamp—Dec 15 1958]

Cleveland—President W. P. Kennedy has announced the appointment of new legal counsels to serve BRT members in three territories where recent deaths of counsels prompted the naming of successors.

Receiving the appointments from President Kennedy were E. B. Henslee and Martin K. Henslee, sons of late Legal Counsel Edward B. Henslee Sr., who also was the Brotherhood's general counsel; Herbert Zelenko, Democratic congressman representing the 21st District of New York, and his law partner, Arnold B. Elkind, and J. Murray Dunn.

The Henslee brothers, who have formed a partnership, will represent the same territory which was handled by their father for many years. Their appointment was effective Nov. 22, date of General Counsel Henslee's death. Office address is Suite 810, 139 North Clark St., Chicago 2, Ill.

The territory of Legal Counsels Zelenko and Elkind will include all of Metropolitan New York City District and all of New Jersey with the exception of Camden. The appointment took effect Dec. 1. They are located at 285 Madison Ave., New York 17, N. Y.

Legal Counsel Dunn will serve all the territory represented by late Legal Counsel Francis L. McElroy with the exception of Metropolitan New York City District and New Jersey. He assumed his appointment Sept. 24, date of McElroy's death. His office is at 707 State Tower Building, Syracuse, N. Y.

In naming Edward B. (Ned) Henslee Jr. and Martin [fol. 781] K. Henslee as legal counsels of the Brotherhood, President Kennedy told the brothers that he had "full confidence" in their ability "to take over and represent as legal counsel the same territory which your late father, Edward B. Henslee Sr., successfully handled for a great many years." Added Mr. Kennedy: "Congratulations to you and your firm in the handling of these important duties that affect so many members of our Brotherhood."

[fol. 782]

LEGAL AID MEET IS SET FOR LODGE 347

[Stamp—Oct. 22 1956]

Memphis, Tenn.—The BRT Legal Aid Department and Chickasaw Lodge 347 are sponsoring two meetings Oct. 30 at 10 a. m. and 6:30 p. m. acquaint members with the operation and mechanics of the Legal Aid Department and the benefits to be derived from it by members and their families in case injuries are sustained while on duty. Meeting place is Railroad YMCA, 960 South Third St., Memphis.

[fol. 783]

EXPLAINS IMPORTANCE OF LEGAL AID*

President and Mrs. Whitney,
Toastmaster Tom Davis, Officers,
Delegates, Members and Friends:

I want to talk to you tonight about something that is somewhat more serious than what Mr. Tom Davis, our toastmaster, has briefly referred to and that has particular reference to the Brotherhood's Legal Aid Department and the manner in which it operates.

The reason that I desire to talk to you about that particular department is because I have learned in my travels about the country that very, very few of our members appear to understand the value of the department or have any idea how it operates. My first knowledge of the Federal Employers Liability law, which covers the rights of railroad employees engaged in interstate commerce, began many, many years ago and happened about a month before I was separated from a job as conductor on the Northern Pacific due to my activity in behalf of a full crew law in the state of North Dakota. At that time a boy by the name of Dick Brown, who I had worked with many years, had his right arm amputated at the shoulder. He was working on the local. They were taking a bunch of gravel cars into a sandpit and had run around them on the passing track and were backing up to go down in there and shove these cars into a spur track. Dick was riding on the caboose behind the engine and they were proceeding down the track when an air hose burst, jerking him off the platform onto the track so that the wheels passed over his right arm and it had to be amputated at the shoulder. Shortly after the operation, the claim agent called on him and began to discuss settlement. Of course, the

* EXPLAINS IMPORTANCE OF LEGAL AID—Text of an address by Brother S. C. Lush, former Manager of the Legal Aid Department and now deceased, before a group of 275 Delegates and others at the Ritz Plaza Hotel, Miami Beach, Fla., October 30, 1946.

claim agent told him that the railroad company was heart-broken to think that he had sustained this terrible injury and that they were also particularly put out because of the fact that the law was such that he had no legal cause of action against the railroad and, because of that fact, it was going to be impossible for them to make any substantial settlement in his behalf. However, out of the generosity of their heart, they were going to take \$2,800 and give it to him as a present. Now Dick knew nothing about his rights under the law and he accepted the \$2,800.00 as the claim agent had convinced him that a bursted air hose was a hidden defect, or one that it was impossible for the railroad company to find and, therefore, he said that, under the law, the company was in no way liable. About a month after they had settled with Dick Brown for \$2,800.00, I learned that the United States Supreme Court had said, in

[Photograph of S. C. Lush]

a similar case, that a bursted air hose was a Safety Appliance defect because, they said, evidence presented in this particular case showed, what you and I all know, that a spongy hose is an indication that the hose is going to blow out shortly and that, if the railroad company had made proper inspection, they would have been able to determine that they had a defective air hose on this car and the court held the railroad company was legally liable for all his damages. Had Dick Brown known that, instead of accepting \$2,800.00, he would have received probably \$28,000.00 or more for his injury. That incident created my interest in the rights of railroad employees under the Federal Employers Liability Law.

That law, as amended, covers practically every man working in train and yard service because there are very, very few such employees, if any, who are not, in some way in their work, closely associated with interstate commerce and if you are and you are injured, then your rights are governed by that law.

I know that many of our members have the idea that they are governed by compensation laws, that is the compensation laws in the various states—that is not true. You come under the Federal Employers Liability law because you are engaged in interstate commerce or other commerce so

closely related thereto as to become a part of it. I am happy that you are not governed by the compensation laws and I think that you will agree with me when I briefly tell you why. Under the compensation law, so-called, and wrongly so, because I have never heard of one of them that compensates, there is only one benefit over the Federal Employers Liability law and that is this: No matter how you are injured, if you are on the property of the company and injured in the course of your employment, regardless whether the company is at fault or not, you receive the amount provided for by the law. However, the bad part of the law is that it provides not for compensation but only relief. They pay you a small part of your salary for a limited time and that is particularly true if there be a serious injury such as the amputation of an arm or leg. They will pay you for so many weeks or approximately three years and you receive that compensation every two weeks which is only part of the money you have lost because of that injury, and at the end of that period, you cease to receive these benefits, yet your arm or your leg doesn't grow back and you continue to have the disability. That is the feature of the so-called compensation laws which make them undesirable for railroad employees.

Under the Federal Employers Liability law, while it is true you must first be able to prove that the railroad company caused your injury in some manner, and remember this, many of our brothers have a mistaken idea that the mere fact that they were injured on duty through no fault [fol. 784] of their own the railroad company is liable but that is not true. You must prove that the railroad company caused your injury either because they violated some law that was passed for your protection or that they did not give you a safe place to work, or some employe did something that he should not have done or failed to do something that he should have done. You have to show that they are to blame in some way.

I have been connected with this character of work with Tom Davis or the Legal Aid Department for over 25 years and I am, therefore, in a position to speak to you in regard to the number of employes in train and yard service who are injured as a result of the fault of the railroad

company. I think we can safely say that 99 per cent of the injured men I have heard of were injured through the fault of the railroad company and that the company was legally liable; if you were able to establish those facts. The peculiar thing that I find is that many, many of our members and a majority of them particularly in those sections where they have not become familiar with the Legal Aid Department of the Brotherhood and their own rights, seem to be laboring under the idea that a railroad company hires claim agents for the purpose of paying the injured members money. Now the railroad company hires claim agents for exactly the reason they hire brakemen, switchmen and conductors—they hire them in order to make money. If you will just stop to think a minute, you will agree that there is no possible way that a railroad company could get any money from a claim agent. There is no revenue received through that department but there is a very good reason why they are there or they would not have them on the job. If they were going to pay you all that you are entitled to under the law, all they need do is to have the trainmaster, superintendent or someone else find out how the accident happened and then send you a check for the amount to which you are entitled. But they have found out that they can make money by taking advantage of your ignorance and settle with you for a very small amount of money. If a claim agent is not successful in doing that or in settling a large majority of his cases with the employes at much less than you are entitled to under the law, he will be in exactly the same situation that a conductor finds himself when he is unable to get his trains over the road as fast as others, or a switchman who is unable to put cars over the hump like others, and that is, he will find himself out of a job. It is the claim agent's bread and butter to do what? Not to pay you what you are entitled to, but to keep you from getting every dime of it that he can and he is hired for just that. Yet our men are taken in when they come around and tell you how sorry they are. Perhaps they are sorry that a man is injured but it doesn't reach as far as the check book.

I want to warn you on this point—if anyone of you are so unfortunate as to sustain an injury, the one thing not

to do is to give a statement to a claim agent, because his only purpose in getting the statement is to get something in there which will make it appear that the railroad company is not liable. I don't care how clever you are, in telling your story to him you will find that when it is written up it will appear to you as being just about what you said but if you get some lawyer that knows the law, you will find that you didn't say what you thought you had said, or what the claim agent wrote out was not just what you thought that it said. He will twist the language around in such a way as to make it appear that the railroad company was not to blame. Just to give you an illustration of what I am driving at: You know and I know that the average man in railroad service does not appreciate the fact that in order to have a defective coupler it is not necessary that that coupler be broken. The mere fact that a coupler will not automatically couple or uncouple without a man going between the car ends makes it a Safety Appliance defect. In other words, in connection with automatic couplers, the law provides that the railroad must equip its engines and cars with automatic couplers which will couple automatically by impact and uncouple without the necessity of men going between the ends of the cars and that law means just exactly what it says. If you are going to make a coupling or the coupling fails to make, or a drawbar is out of line and you see that it won't make and you pull it into line or you see that the knuckle doesn't swing open and you pull the knuckle open, or the lock block doesn't drop and you go in between the ends of the cars to jiggle down the lock block, and you become injured as a result, you have a clear case against the railroad because they have violated the automatic coupler law. The mere fact that you had to go in there and adjust it makes it a violation of the law. If they violate that law and you are injured, they have no defense. They may go into court and say, "Yes, we did that but we have a rule that provides that the men will not go between moving cars or that the men will separate the cars so many feet before going in between them to adjust couplers," but this will not help them because if they caused you to be injured by having a defective coupler, they do not have the privilege of

bringing in the rule or mention the fact that they have such a rule. Why? Because if they had not violated the law, it would not have been necessary for you to be in there. The mere fact that that coupler was defective protects you from any wrong that you did as a result of their failure to provide you with a coupler that worked in accordance with the law. I have talked to a lot of men about this and they'd make mention of a sharp curve where a coupling would not make without pulling the drawbar over. Now the law doesn't say a thing about a sharp curve and it makes no difference about the sharp curve. When you go to the corner of a car and push the lever down or pull the pin up and the knuckle doesn't kick open or the drawheads don't line up so you can back up the cars and they will couple and you have to go in to adjust those things by hand and you are injured, you have a cinch case against the railroad. How does the claim agent get around that? He comes to you and you tell him what happened. When he writes up the statement he will say to you, "Was there anything broken about the coupler?" and there wasn't, as the only trouble with the coupler was that it was out of line or the knuckle did not open and you say to him, "No." When he writes up the statement, he doesn't say that it was not broken but puts the words into your mouth and says "there was no defect." You didn't know the law and that it was a violation of the law to have an inoperative coupler and you sign such a statement. When you do that you relieved the railroad company of responsibility because you said that there was no defect. That is but one of the many angles that you must guard against. When you are injured, do not sign a statement. Some railroads, and that is most of them, require you to make a report when injured and it is a violation of their rules if you didn't. In telling of the injury you can say that you were injured at a certain time, at a certain place and received a certain injury and when they ask you how you were injured and who is to blame and all the other questions, just leave them blank as they are only getting you to put something in there that can be twisted around when the claim agent comes around to get a written statement.

There is another important thing to remember: Should you be so unfortunate as to have an injury, get information of it to your lodge officers so that your secretary can send a report to the Grand Lodge at Cleveland, telling [fol. 785] them about your injury and how your accident happened. If they should call you in for an investigation, tell them that you are willing to go into the investigation but that you want your general chairman to represent you. Now why should you say that? It is not likely that you need the general chairman but do this in order to delay it so that you will have time enough to contact the legal counsel. When you tell him how you were injured, he will be in a position to tell you in what way the railroad company is liable and in 99 cases out of a hundred they are responsible for your injury. Then you will know what your rights are under the law.

Very often we find men making out statements that they were injured because their feet slipped off the brake platform. I have worked around box cars for fourteen years and I never heard of a man slipping off a brake platform. I have heard of a lot of men being thrown off. Now the law covering hand brakes is so simple. All there is to it is one thing: The law provides that the railroads must equip their cars with an efficient hand brake, and that is all there is to the law, so when you get up there to release the brake and it kicks you off, maybe your feet do slip but that wasn't the cause—it was because of an inefficient hand brake. When you go to the hand brake and the chain is wrapped around in a ball on the staff and you take the last quarter turn and it lets go and you lose your balance and fall from the brake platform, you were thrown off because of an inefficient hand brake. The claim agent gets your statement and he will have it that you slipped.

Those are a few of the things to keep in mind why you are not competent to give a statement to a claim agent or anyone else until you have received legal advice from someone that knows the law as well as the claim agent. The railroad company has hired these men because they know the law and they have a staff of attorneys waiting for you to get injured so as to protect their rights. They are not protecting your rights but they are in there to take away

these rights to which you are entitled. Now you can't get a dime that the law does not provide for and they are waiting for you to be hurt so they will be on the job, knowing more about the law than you do, in order to keep for the railroad company some of the money that you are entitled to under the law.

Just as soon as you hear that a brother is injured, get a report to Cleveland. The injured man should then ask legal counsel whether or not the company is liable and if so, in what way and he is then in a position to tell him what his rights are under the law and the regional counsel is also in a position to tell you something about what the value of your case is so that you are not at the mercy of a claim agent.

Before the Legal Aid Department was set up, there were three good reasons why we needed the department. Prior to the time that we had a Legal Aid Department to represent our members, our members were not only confronted with the danger of the claim agent but others. While many, many lawyers in the personal injury field would be honest and, if a man asked him what his rights were, they would tell him, in some cases without charge and they were reliable. But many, many other lawyers, who pretended to be honest and upright men in that profession, were interested in the fee and they preyed upon the fellows who were injured who had no case against the railroad. That is, perhaps, in the one per cent of the cases where the railroad company was not liable. These fellows knew that the company was not liable and knew that if it was taken into court they could not collect a nickel but because the railroad company had offered a man, who had lost his hand or foot, say \$3,000 or \$5,000, they would, under their contract, get 30, 40 or 50 per cent of the money that he would have gotten from the railroad company when they knew they could not help him one bit. That was why President Whitney put this proposition up to the lodges in 1930 when the Legal Aid Department was established.

If you have a minor injury, under Brotherhood law you have the right to refer that case, under General Rule No. 5 of the Constitution, to the lodge for action just exactly the same as if you had a run around. Any claim for pay

for minor injuries can be referred to your local grievance committee just the same as a claim for a run around or other loss of pay. If the local committee is unable to settle it you refer it to the general chairman. If he is unable to settle it, it can be referred to the legal counsel if it is for only a hundred dollars. The railroad companies see that when they get into the habit of settling minor claims for 50 per cent, it is a build-up to settle the big cases for much less money. No matter what the size of the claim which the railroad refuses to pay when they are liable, they should be forced to pay 100 per cent in all of them and they soon will find out that they can't afford to go into court and fight the small cases. I know of men who have said that if they did that they would lose their jobs, that they have a considerable number of years' rights and that they are not going to sacrifice those rights for say \$50.00. Now, you needn't worry about those rights as they don't dare to fire you because you brought suit; that is your constitutional right and no railroad has a right to take it away from you and the President and the Brotherhood of Railroad Trainmen will use its strength to get you back on the job and will get pay for you if they do. We have seen a few cases where that did happen and they went to the Board and the Board made the railroad company put them back, with pay. I know of a case of a switchman where the ball of the switch hit his foot and he suffered a broken toe. They offered the general chairman half-time and the case was turned over to the legal counsel and he had only lost 30 days. The case came up for trial and the man was working from 11 p.m. to 7 a.m. He went to court and worked that night and the next day the jury brought in a verdict of \$3,000 and he is working on the job today. I can tell you of fifty more such cases and you needn't worry about that part of it.

Another thing that concerns the men is when a representative of the Legal Aid Department comes to them when someone has been unfortunate enough to sustain an injury and he asks them for a statement as to how the accident happened. Now I know that on some of the railroads, notwithstanding the law, they have in their rule books a rule which says that you will be discharged if you give

information with regard to anyone being injured to anyone other than an officer of the railroad company. You needn't worry about that. They got away with that a long time but not any more because on August 11, 1939, our good friend President Roosevelt signed a bill, an amendment to the Federal Employers Liability law which stops anything of that kind. It is short and I am going to read it to you, it is Section 60:

Sec. 60. (Federal Employers' Liability Act)—Penalty for suppression of voluntary information incident to accident; separability clause.

Any contract, rule, regulation, or device whatsoever, the purpose, intent, or effect of which shall be to prevent employes of any common carrier from furnishing voluntarily information to a person in interest as to the facts incident to the injury or death of any employe, shall be void, and whoever, by threat, intimidation, order, rule, contract, regulation, or device what- [fol. 786] soever, shall attempt to prevent any person from furnishing voluntarily such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employe for furnishing voluntarily such information to a person in interest, shall, upon conviction thereof, be punished by a fine of not more than \$1,000 or imprisoned for not more than one year, or by both such fine and imprisonment, for each offense: Provided, That nothing herein contained shall be construed to void any contract, rule, or regulation with respect to any information contained in the files of the carrier, or other privileged or confidential reports.

So you won't find the officers taking a chance of going to jail or even have the nerve to tell you that you should not give the statement. When our representative comes around and asks you with regard to a statement as to a man's injury, you need not worry about that because the railroad company doesn't dare fire you.

Under this Federal Employers' Liability law, the amount that you can recover for your injury is only limited by the

amount that you can show that you were damaged as a result of the injury. As I have previously pointed out, under the compensation law you get a certain percentage of your salary for a number of weeks and at the end of that certain period you are cut off. Under the Federal Employers' Liability law, you will get all that you lose and in addition, you get paid for the pain and suffering. Under the compensation law, you generally find that a man who loses a foot or a hand will get \$4,200 to \$4,500 and at best \$4,800, that they have handed out in dribbles over three years. Under the Federal Employers' Liability law, our men have gotten \$20,000 to \$70,000 for such an injury, in a lump sum so that he can invest it in some way to provide a livelihood. That is also true when the man is unfortunate enough to be killed on the job. His widow is not limited to a certain amount of money to be paid to her, but she is entitled to a sum of money which, if placed at a reasonable rate of interest, will pay her what she would have received during his life's expectancy and in many cases it has run up to \$48,000 for a widow. So you can see the advantage of this law.

I want to say to you brothers and sisters, bear in mind that this department was established by President Whitney through authority of the lodges for just one purpose, and that was to see that each and every member of the organization, who was so unfortunate as to be injured on the job, received what? Not anything from the railroad that they are not entitled to but what the law says they are entitled to, instead of what a claim agent was able to talk you into taking.

For many years, they got away with many, many cases, where a man was injured because of close clearances. Maybe this man had been by this particular building many times and the building is too close and they have a sign up there reading "Close Clearance." If he was unfortunate enough to forget that the building was too close, or the smoke was blowing down and he couldn't see it, or with that small light in his lantern he was not able to see that building, and he was brushed off and injured, you could not collect a dime because the company said that you knew about it and under the old law you could not collect. In 1939, this law

was amended so by putting that sign up there, the railroad company demonstrated that they knew it was a close clearance. If you are injured under those circumstances, the company knew of this danger and they didn't give you a safe place to work, their defense of your assumption of risk is gone and you have a good case against the railroad.

Those are some of the things that you must keep in mind. I could talk on and on about these cases but this department is here to help you. It doesn't cost you a plug nickel for this help. If you will consult with the regional counsel, who will get all the facts and who knows the law, then I dare say that in 99 out of every hundred cases, you will find that the railroad company is legally liable and you will get all that you are entitled to under the law. If you will do that, your rights will be protected and in those places where our members have done this the amount of settlements made direct without a lawyer have gone up by leaps and bounds, while in other parts where they do not do this, they are still making 50 per cent settlements and the railroads getting away with it because those men didn't know what their rights were and have not protected themselves.

Frequently, a claim agent will say to a woman who has lost her husband, "If you want to give it all to a lawyer, that is all right," and that woman often is influenced into believing it. Now under the provisions of the operation of the Legal Aid Department, no woman or child ever gives any lawyer, representing the Brotherhood of Railroad Trainmen, any part of what she is offered by a railroad, as it is provided that they take it on a 25 per cent basis. To illustrate that point: Last year, there was a case in a little town in Iowa and that man had a case of absolute liability. The claim agent said that they would give \$10,000. Our legal counsel told the widow: "Under the law, you and your children are entitled to at least \$40,000.00. We will take your case and you will get the \$10,000 and we will take it on half of the rest or 25 per cent of the settlement or verdict," and that case was settled in less than five months for \$35,000 and that woman received \$27,000. Now she didn't give the lawyers any part of the money that the railroad was going to give her if she had taken the \$10,000 offered

by the company, but she received \$27,000. Who paid the lawyer? The railroad paid the fees, and the woman and children are being protected.

Let me say one more thing about this Legal Aid Department. The lawyers are not by any means the most important part of the Legal Aid Department. It is provided that we have an investigation department and every investigator is appointed by the President and carries a card of the Brotherhood of Railroad Trainmen. They are railroad men or lawyers, representing the Legal Aid Department and those men go out and investigate these cases and submit the facts to the lawyers representing this Brotherhood without one cent charge to an injured man or the widow and children of the man who is killed, and if the widow or an injured man is offered a settlement to which they are honestly entitled, they are privileged to accept that and that service by this department does not cost the injured one or the widow and children one red penny.

Now when an investigator comes to your lodge or into your town and asks you to assist him, as a member of the Brotherhood, it is your duty to go with the investigator and get the real facts. I thank you. **THE END**

Reprinted from January, 1947, issue,
THE RAILROAD TRAINMAN

[fol. 787]

PLAINTIFF'S EXHIBIT 73A

**IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA**

**NATIONAL CONFERENCE OF
STATE LEGISLATIVE REPRESENTATIVES**

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**W E Skinner, Vice-Chairman
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[fol. 788]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 73-B

DIRECTORY

OF THE

GRAND LODGE and
SUBORDINATE LODGES

OF THE

BROTHERHOOD OF
RAILROAD TRAINMEN

(Brotherhood Railroad Trainmen symbol)

JANUARY, 1960

Issued January, April, July and October

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[fol. 789]

SUBORDINATE LODGES

B—Bus Lodge

B & R—Bus and Rail

P—President. S—Secretary. T—Treasurer. C—Collector.

R—Legislative Representative. LC—Local Chairman.

Legislative Representative is also Local Chairman,
shown as : LC&RWhere number follows address, it indicates city postal zone
and should be included in address.[fol. 790] 190—CHADRON, NEB., Black Hills, 2nd Sun,
2 pm, I O O F Hall, 207 Moorehead St. (Org. 1-27-86.)

C R Adkins, 520 Shelton St. P

F H Waggener, 108 N Morehead St. S&T

R J Groves, 236 N Chadron Ave. R

G S Ballieu, 114 Lake St. C & N W LC

[fol. 791] 261—INDIANAPOLIS, IND., Hoosier, last Tues,
odd months 10 am, even months 7 pm, G A R Hall,
1714 E Washington. (Org. 7-29-88.)

G E Agal, 4031 E Minnesota St (3) P

H F Romeril, 1531 E Ohio St (1) S

W Y Matthews, 3233 N Bolton Ave (19) T

H E Platt, 11119 E Wash (29) P Co (W) Col LC&R

B W Havercamp, 7330 So East St (27)

..... P Co (W) St L Div LC

H D Daugherty, 531 N Keystone Ave.

..... P Co (W) IV LC

G P Rummel, 3720 N Butler Ave. P Co (W) Ind Yd LC

Paul Richmond, RR #1, Pittsboro, Ind.

..... W R R R LC

[fol. 792] 1124—MACON, GA., Ocmulgee, 3 pm, 2nd & 4th
Sun, 4th floor of the Professional Bldg, 830 Mulberry St.
5th Sun, 3 pm, Columbus, Ga, 6th Ave between 8th &
9th Sts. (Org. 3-24-58.)

B G Byington, 4131 Eden.....	P
R S Hatcher, 4540 Lakewood Ave.....	S&T
G L Slocumb, 3246 Arnwood Ave.....	R
C J Maxwell, 2338 Lasseter Pl.....	C of Ga (Yd) LC
T H Howard, Apt K-9 Winship Gardens.....	
.....	C of Ga (Rd) LC

[fol. 793]

GENERAL GRIEVANCE COMMITTEE ORGANIZATIONS
RAILROADS

C—Chairman S—Secretary

[fol. 794] CENTRAL OF GEORGIA RY

B G Byington (No 1124) Rm 300, Professional Bldg, Macon, Ga.....	C
H H Epperson (No 376) 3700 Pine Forest Rd, Macon, Ga.....	S

954

[fol. 795]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 74-A

DIRECTORY

OF THE

**GRAND LODGE and
SUBORDINATE LODGES**

OF THE

**BROTHERHOOD OF
RAILROAD TRAINMEN**

(Brotherhood Railroad Trainmen symbol)

JANUARY, 1961

Issued January, April, July and October

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[fol. 796] 71—OAKLAND, CAL., Western Shore, 2nd Mon,
10 a m, 4th Tues, 8 p m, B of R T Hall, 1833—7th St,
(Org. 3-2-85)

V P Sewell, 2251 Pacific Ave, Alameda, Calif.....P
L L Varner, 1325 Belding St, San Leandro, Calif.....S
J H Amaral, 2727 E 23rd St (1).....T
J E Teague, 357 Vernon Ave, Apt 203 (10).....
.....S P (Pac) (Pass rd) LC
S B Rider, 1833—7th St (20).....S P (Pac) (Frt-rd) R&LC

[fol. 797] 124—BALTIMORE, MD., Fraternity, 1st Tues,
7 pm, 3rd Tues, 10 am, Red Men's Hall, Hickory Ave &
36th St. (Org. 3-27-89.)

M P Walsh, 3027 Keswick Rd (11).....P
N W Tingle, 1651 Northbourne Rd (12).....R&S
H A Bowman Jr, 412 Elmwood Rd (6).....T
J J McCorkle, 3017 Pinewood Ave (14).....P Co (E) LC
P D Stouffer, 1416 Patapsco St (30).....W M LC
J H Baier, 6939 Eastbrook Ave (24).....C RR Co LC

[fol. 798] 160—PHILADELPHIA, PA., E. T. Hay, 2nd Tues,
10 am, 4th Tues, 8 pm, PRR Post #204 Amer. Leg.,
3325-35 Market St., (Org. 10-4-85.)

J S Mink, 215 N 7th St, Darby, Pa.....P
J A Coffey, 5331 Willows Ave (43).....S
J J Farrell, Rm 249 Middle City Bldg, 34 S 17th
St (3).....T
W Siess, 402 W Ashland Ave, Glenolden, Pa.....R
J J Hoy, 4027 Ellendale Rd, Drexel Hill, Pa.....
.....P Co (E) Phil Ter LC
R Snauffer, 4717 Hazel Ave (43).....
.....P Co (E) W B Div LC

[fol. 799] 261—INDIANAPOLIS, IND., Hoosier, last Tues,
odd months, 10:30 am, even mos 7:30 pm, G A R Hall,
1714 E Washington. (Org. 7-29-88.)

G E Agal, 4031 E Minnesota St (3).....P
H F Romeril, 5324 Primrose (20).....S

W Y Matthews, 5941 East 24th St (18).....T
 H E Platt, 11119 E Wash (29).....P Co (W) Col LC&R
 B W Havercamp, 7330 So East St (27).....
P Co (W) St L Div LC
 H D Daugherty, 531 N Keystone Ave.....
P Co (W) IV LC
 R D Carrico, 1605 E Iowa St (3).....P Co (W) Ind Yd LC
 Paul Richmond, RR #1, Pittsboro, Ind.....
W B R R LC

[fol. 800] 318—ANDERSON, IND., C. H. Reno, 1st Tues,
 3rd Sun, Marine Dr, I O O F Hall. (Org. 9-11-98.)
 W E Wright, RR #1, Box 306D.....P
 R D Morris, 4605 Madison Ave.....S&T
 R G Stone, 211 E 37th St.....R
 Fred Harmon, 6820 Sherman St.....N Y C (S) LC

[fol. 801] 699—INDIANAPOLIS, IND., Bill Lee, 1st Mon,
 1:30 pm, 3rd Mon, 7:30 pm (3rd Mon only July, Aug,
 Sept), I O O F Bldg, 2826 N Sherman Dr. (Org. 7-29-28.)
 H H Lykins, 3001 N Drexel (18).....P
 F M Grable, 2184 N Gale St (18).....S
 D W Harrington, 3620 N Bancroft St. (18).....T
 P C Williams, 2406 N Sherman Dr (18).....R
 W R Imel, 3724 N Oxford St, N Y C (S) (Ohio Div) LC
 R M Crago, 3822 Wildwood Dr (19).....
N Y C (S) (Ill Div) LC

[fol. 802] 1050—HORNELL, N. Y., Peter A. Maloney, last
 Wed, 7:30 pm, Republican Club Rms 132 Main St, 2nd
 Floor. (Org. 7-11-50.)
 H G Freeland, 49 Erie Ave.....P
 F M Wattles, 19 State St.....S&T
 Robert Kerr, 413 Monroe Ave.....R
 L A Pickard, 94 E Washington St.....Erie (Yd) LC

[fol. 803]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 74-C

DIRECTORY

OF THE

GRAND LODGE and
SUBORDINATE LODGES

OF THE

BROTHERHOOD OF
RAILROAD TRAINMEN

(Brotherhood Railroad Trainmen symbol)

JULY, 1961

Issued January, April, July and October

[fol. 804] 183—CLINTON, Iowa, Hand-in-Hand, 1st-3rd
Mon, 7:30 pm, Clinton Labor Congress Hall, 613 So. 2nd
St. (Org. 14-86.)

J L Mullen, Jr, 2436 Dunham.....P

R L Townsley, 421 So 14th St.....S

A P Tancik, Delmar, Iowa.....T

[fol. 805] R L Callahan, 748—14th Ave So.....R

E A Stouvenal, 909 So 5th St.....C & N W Rd LC

R H Ehredt, 568—12 Ave So.....C & N W Yd LC

[fol. 806]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 75

(Letterhead of Brotherhood of Railroad Trainmen,
Cleveland, Ohio)

March 16, 1959

WPK-z

To All Legal Counsel,
Brotherhood of Railroad Trainmen.

Dear Sirs and Brothers:

Some time ago, I sent you a copy of the opinion of the Supreme Court of Illinois in a case in which the Brotherhood of Railroad Trainmen asked the Court of Illinois for a ruling as to what the Legal Aid Department of the Brotherhood can do for its injured members and the conduct that should be followed by Legal Counsel of the Brotherhood.

Under date of March 20, 1958, the Supreme Court of Illinois handed down its opinion which is found in volume 13, 2nd Edition of the Illinois Supreme Court reports on page 291.

In compliance with said opinion, any Legal Counsel who represents the Brotherhood is hereby instructed, and required, to live up to said opinion in its entirety, and any violation shall be cause to remove said attorney, and the same shall be reported to the Bar Association of the particular state in which such violation may occur.

The Brotherhood will finance its Legal Aid Department, and will investigate accidents so that it will be acquainted with the cause of said accidents, and by so doing will be able to remedy any violation of the Federal Employers' Liability Act and The Safety Appliance Act. The result of such investigation shall be made available only to the injured person.

Please arrange to comply with these instructions on and after April 1, 1959, and acknowledge receipt of this letter by return mail.

Fraternally yours,

W. P. KENNEDY
President.

[fol. 807]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 76

(Letterhead of Bernard M. Savage, Baltimore, Md.)

March 17, 1959

Mr. W. P. Kennedy, President
Brotherhood of Railroad Trainmen
1370 Ontario Street
Cleveland, 13, Ohio

Dear President Kennedy:

I have your letter of March 16th addressed to all Legal Counsel, instructing them to comply with the decision of the Illinois Supreme Court dated March 20, 1958. Of course, I shall do so.

Fraternally yours,

/s/ BERNARD M. SAVAGE
Bernard M. Savage

BMS:RT

[fol. 808]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 77

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.:

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

No. 727 273

SOUTHERN PACIFIC COMPANY, a corporation,
Plaintiff;

vs.

CLIFTON HILDEBRAND, et al.
Defendants.

W. P. KENNEDY, individually, and in representative capacity for and on behalf of the BROTHERHOOD OF RAILROAD TRAINMEN, an international labor organization, its officers and members,

Cross-Complainant;

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation; SOUTHERN PACIFIC COMPANY, a corporation, ASSOCIATION OF AMERICAN RAILROADS, an Illinois corporation; and DOES 1 to 400, inclusive,
Cross-Defendants.

The deposition of WILLIAM P. KENNEDY, a witness herein, taken on behalf of the Plaintiffs, at 1:30 o'clock, P. M., Wednesday, October 5, 1960, at Suite 810, 139 North Clark Street, Chicago, Illinois, before Irving Ross, a notary public in and for the County of Cook, State of Illinois, pursuant to stipulation.

[fol. 809] Examination.

By Mr. Biezensahn:

Q. Will you state your full name?

A. William P. Kennedy.

[fol. 810] Q. For how long have you been President?

A. Since July, 1949.

Q. Will you indicate what your role in the Brotherhood was, prior to that time? What offices did you hold?

[fol. 811] A. Prior to that time, I was a General Secretary and Treasurer.

Q. During what period was that?

A. For a period of time from 1947 to 1949.

Q. And, prior to 1947?

A. I was Vice-President in the western part of the United States for the period of September, 1936, to the day I became General Secretary and Treasurer.

Q. Which was 1943, if I recall?

A. No; it was 1945.

Q. And, prior to 1936, what office did you hold?

A. I was General Chairman on the Milwaukee Railroad lines east.

Q. When did you first become General Secretary for that system?

A. I became General Chairman for that system in April, 1921.

Q. And, prior to that time, had you been active in the union's affairs?

A. Yes.

Q. In what capacity?

A. As Local Chairman, Local Job Service, since 1910—fifty years ago.

Q. From the time you became General Chairman for [fol. 812] the Milwaukee lines east, did you devote your full time to the Brotherhood's activities?

A. I have devoted my full time to the Brotherhood's activities since I became General Chairman, back in 1919.

[fol. 813] The President is in charge of all matters relating to wages, rules, rates of pay, working conditions. He is in charge of the financial affairs of the Brotherhood; the purchase of bonds, and the purchase of securities.

He (the President) is the President of the corporation in charge of the Insurance Department. I would say, in general, under our present constitution, he is in charge of all of the various departments and functions of the Brotherhood.

Q. I assume, from what you have said, it is the President who has charge of litigation in which the Brotherhood is interested?

A. If litigation is prompted by the Brotherhood, it would be under his general direction. If the litigation comes from opposite parties, against the Brotherhood, it is up to the President of the Brotherhood to decide how it will be defended.

Q. And it is he who directs counsel appointed by the Brotherhood in their efforts, in such litigation?

A. All counsel for the Brotherhood, in all its official [fol. 814] capacities, is appointed by the Brotherhood.

Q. And, in substance, under the direction and supervision of the President?

A. Yes, sir. In other words, we have a Legal Department within the Grand Lodge, because of so many different problems. We employ a General Counsel, an Assistant General Counsel, and an Assistant to the General Counsel.

There are a number of employees in that department.

Q. I understand. But, during the term of your presidency, or during the period in which you have been President, Mr. Kennedy, in those cases where the Brotherhood has been named a defendant, or otherwise been made a party to various proceedings in the various states, it is you who has directed and supervised the conduct of such litigation in behalf of the Brotherhood?

A. Yes. We come within the scope and jurisdiction of the President.

[fol. 815] Q. To your knowledge, has the Brotherhood, at any time—that is, the Brotherhood of Railroad Trainmen or any of its departments—received contributions from Regional Council?

A. I think that there was an item when the legal department—the so-called legal aid department—was organized, back in the days when my predecessor, Mr. A. F. Whitney, was President.

[fol. 816] I think, at that time, there was some arrangement made by at least certain of the legal counsel to help get the department installed and operating.

But, I will say this now—that at least since April 1, 1959, when the Supreme Court of the State of Illinois rendered their decision, there has been no money come in from any of the legal counsel for payment, or whatever you call it, of any particular claim.

[fol. 817] Q. Did you extend a personal invitation, at any time while President, to any of the Regional Counsel, who were not members of the Brotherhood?

A. No. There were no specific invitations, other than the general invitation that a convention was to be held—the same as all other members of the Brotherhood received.

Q. Even though the particular Regional Counsel may not have been a member?

A. He may not have been a member. He couldn't attend one of our conventions unless he had special permission of the convention, if he was not a member.

Q. So that, you wouldn't extend the invitation to him on a personal basis?

A. If he came to Cleveland, and asked for permission, I [fol. 818] would put it up to the convention. Eleven hundred delegates would decide who was going to attend, if they weren't a member of the Brotherhood of Railroad Trainmen.

Q. Did Regional Counsel, during the period we have confined ourselves to, in the last question, come to the city in which the convention was held?

A. Some of them have.

Q. Isn't it true that a majority of them usually attended? If they did not attend the convention, they were at least present in the convention city?

A. That hasn't always been true, because, when we held our conventions in Miami Beach, Florida, I would say, at no time was there a majority of the legal counsel present.

Q. During that period, that is, from 1949 up until April 6, of 1959, there were how many Regional Counsel?

A. I would say there were approximately twenty.

[fol. 819] Q. Perhaps I can best get at this by briefly describing the organization as I understand it. You can confirm that, or correct me, if I am wrong, Mr. Kennedy.

The Legal Aid Department was set up as a special department of the Grand Lodge of the Brotherhood. That is correct, is it not?

A. That is correct.

Q. And there was put in charge of this department a chief clerk?

A. The President was in charge. He is the one that decided how this particular department would function. All reference came to the President.

In other words, we didn't set up a department that Bill Jones, or John Smith, or somebody else, had exclusive jurisdiction over.

Any correspondence that came to the President of the Brotherhood, that involved this department, was referred to this particular department.

Q. I understand that.

A. The employees in that department, whoever they happened to be—they were the ones who handled it.

Q. I understand that. I understand that the President, at all times, had control and supervision over this department.

A. That is correct.

Q. But, as it was physically set up and organized—office space was provided in the Grand Lodge Headquarters—is that not correct?

A. That is correct.

Q. And there was put in charge of this office a gentleman who was designated as chief clerk?

A. I don't recall what his designation was, at that time. It might have been chief clerk, manager, or something like that. Anyway, there was an employee who was given the responsibility of handling Mr. Whitney's correspondence, with and through that department.

Q. And was the first person appointed to that position Mr. Steve Lush, who is now deceased?

A. He was one of the first ones who was in that department.

Q. And he served up until about the time you became President?

[fol. 821] A. I am not certain as to the years that Mr. Lush served. He died a good many years ago. I am just not sure as to the date of his death.

Q. His successor in that position was, then, Mr. Pinky Lee—is that not correct?

A. Yes. I think that is correct. I think he was the man who went in there later.

Q. And he, in turn, was replaced by Mr. Maher, isn't that correct?

A. Yes, sir.

Q. And Mr. Maher has held this position since about 1950 or 1951?

A. He is in charge of our Research Department.

Q. Prior to April 1, of 1959, he was designated as chief clerk of the Legal Aid department?

A. I think that was his title, yes.

Q. And he held that position from about 1950 or 1951?

A. Whenever it is.

Mr. Maher: The correct date is March 2, 1954.

Mr. Biegenzahn: Q. During the period you have been President, Mr. Kennedy, you, of course, have had control and supervision of this department?

The Witness: A. Yes, sir.

[fol. 822] Q. And you are intimately familiar with the organization and operation of this department?

A. Fairly well; not so much with the details. I am familiar with the general conduct of the department.

Q. Aside from Mr. Maher, there are in this department, then, only secretarial and clerical help, is that correct?

A. That is all; yes.

Q. Mr. Maher is, or has been, for the years since 1954, in any event, the person in charge—and, of course, answerable to you?

A. Yes, sir. That is correct.

Q. At the time the Legal Aid Department was established, Mr. Whitney, then the President, also appointed several attorneys as Regional Counsel—is that correct?

A. Yes.

Q. And, at that time, there were approximately sixteen such Regional Counsel appointed?

A. That is correct.

Q. Each of these persons was assigned a certain geographical area in which he was to act as such Regional Counsel, is that correct?

[fol. 823] A. Generally speaking, that is the way it was handled at that time, yes.

Q. And this arrangement continued right down to the time the change was made, on April 1, of 1959—essentially?

A. I started to make changes a number of years ago. But, the entire department was changed as a result of the Illinois decision.

Q. Now, at the outset, under the understanding with the Regional Counsel—correct me if I am wrong—they would represent such members of the Brotherhood as might retain them, in connection with personal injury and death claims arising out of railroad employment. Is that correct?

A. To some extent, that was so. However, after I became President, I insisted that the Legal Counsel would represent the Brotherhood in all of its problems, other than Legal Aid, or anything else.

Under my direction, I gradually designated each legal counsel to handle all of the injunctions, all of the law suits, all of the problems that we have, in their respective cities.

Q. That was true, when you became President—that [fol. 824] these changes were made?

A. Yes, sir.

[fol. 825] Q. So that, at least so far as this phase of the Legal Aid Department's function is concerned, it was not changed in April—April 1—of 1959, when the designation of Regional Counsel was changed to that of Legal Counsel?

A. No; it was not changed. Because we analyzed the Court of Illinois' order—and nothing in the constitution conflicts with the order—so we just let it remain.

[fol. 826] Q. Certainly. But, as a matter of instruction, and policy, Regional Counsel were recommended by the local officers of the lodge to the injured members?

A. If they were available, yes; I would say so.

[fol. 827] Q. You were aware, at that time, there was some arrangement between Regional Counsel and the Legal Aid Department, were you not?

A. I didn't know anything about any arrangements that were in effect. I knew they were designated by Mr. Whitney, who was the President then, as the Legal Aid Counsel for the Brotherhood in that particular area.

Q. And either at that time, or since, it has come to your attention that there was some financial arrangement whereby the Brotherhood, and its Legal Aid Department, were reimbursed, either directly by member claimants, or by Regional Counsel—is that not correct?

A. It was my understanding that there was some method set up—at least, there were certain Regional Counsel, of which—when I found out how it applied, I brought about a correction, by canceling all or any part of any payment of any kind, to anybody.

[fol. 828] Q. All right, sir. You became President in 1949, did you not?

A. That is right.

Q. And you had come to know Clifton Hildebrand, before that time?

A. I have known him for a number of years; yes, sir.

Q. How far back does your acquaintanceship extend?

A. I would say, probably, I have known him for twelve to fifteen years.

[fol. 829] Q. So that, at the time you became President, in 1959, you were aware he was one of the Regional Counsels?

A. Yes, sir.

Q. And his territory covered the states of California, Arizona, New Mexico, and portions of Texas—is that not correct?

A. I am not so sure about Texas. I think he did cover the states of California, Arizona, and New Mexico.

Q. Did his territory extend at all into the State of Oregon?

A. I wouldn't know about that.

Q. At the time you became President, you were aware that there was pending in California a State bar disciplinary proceeding against Mr. Hildebrand, and his partners, Mr. Bills and Mr. McCloud, were you not?

A. I understand there was some legal action that had been taken against Mr. Hildebrand that was finally decided by the California Supreme Court.

Q. And you were apprised, generally, of the contents of that decision, were you not?

[fol. 830] A. No; I never knew what the particulars were, with regard to it.

Q. You did know that the arrangement between Mr. Hildebrand, as Regional Counsel, and the Brotherhood, was inquired into?

A. Yes. I understand that was part of it.

[fol. 831] Q. Do you recall, in the year, 1951, certain proceedings were initiated in El Paso, Texas, culminating in a consent decree, in February of 1952?

A. Yes. I remember that was called to my attention.

Q. And the Brotherhood was a party to this proceeding—do you recall that?

A. That is correct.

Q. As President, I take it, you had control of this litigation?

A. I had, at that time.

Q. And you recall that the Brotherhood, through its attorneys, did consent to the decree ultimately entered there?

A. I knew we consented to the decree—but the provisions of the decree have long since been forgotten.

Q. But you, as President, had to inquire into and approve the terms?

A. I think that is correct; yes.

[fol. 832] Q. —and where that state had, by judicial or other action, made known to you that he had violated such laws, that you took action, with respect to Mr. Hildebrand?

A. Yes.

Q. Is that correct?

A. Yes; that is correct.

Q. It was only in these states he was relieved of the responsibility as Regional Counsel?

A. That is correct.

Q. As President of the Brotherhood, did you make a point of inquiring into the activities of Regional Counsel, so far as the manner in which they obtained business was concerned?

A. Yes, I did.

Q. And in those situations—if any—where you found that Regional Counsel had overreached themselves by soliciting the business of injured members, did you take [fol. 833] steps to relieve them as Regional Counsel?

A. I either took steps to relieve them as Regional Counsel, or accepted consent decrees they could no longer continue in that capacity.

Q. During the period in which you have been President, have you had occasion to relieve any Regional Counsel, or Legal Counsel, by reason of the manner in which he obtained business of the members of the Brotherhood?

A. No. I can't say that I have relieved them. However, I have failed to appoint those whose records, I thought, wouldn't meet the requirements of the Brotherhood—who wanted to cooperate with the Illinois Supreme Court decision—since it was rendered in April of 1959.

Q. I believe, sir, the decree was rendered in March of 1958.

A. Yes. They gave us until a certain period of time, in 1959, to put our house in order. I agreed that we would do that—which we did.

Q. Now, you have indicated that you have refused to appoint as Regional or Legal Counsel certain persons, or certain attorneys, whom you had reason to believe [fol. 834] had not, or would not, comply with the provisions of the Illinois decree.

Do you recall any of the individuals that you refused to appoint, on that basis?

A. No. I can't recall, right now, any of them. But, I made up my mind that any attorney working for our Brotherhood must necessarily live up to all of the provisions of the decision—which was a unanimous decision—of the Illinois Supreme Court—or they couldn't continue in that capacity for the Brotherhood.

I have so informed them. As a matter of fact, I informed them, if I found any attorney violating those principles, I would be the first one to report them to the bar association.

[fol. 835] Q. Was this customarily done, with respect to all Legal Counsel? Are their pictures published in the Trainmen News, and an announcement of their designations made in this fashion?

A. It has been the customary practice since I have become President. I recall, when I appointed Mr. Zalenko, a former Congressman, as a Counsel in the New York area—and his partner, Mr. Elkin—I put their pictures and background in the Trainmen News for the benefit of our members in that particular territory.

Q. And have you undertaken to appoint Alex S. Dombey as Regional Counsel, or as Legal Counsel?

A. I have appointed him as counsel for Brotherhood problems in Columbus, Ohio. But, he has not been designated as having any territory.

[fol. 836] Mr. Biegenzahn: Q. Were you aware that Mr. Dombey had been suspended from practice in the State of Ohio for a period of one year, for solicitation activities?

The Witness: A. I was aware that there was some difficulty in the past years, as a result of some past actions on his part.

[fol. 837] Q. But, despite this knowledge, you felt that Mr. Dombey could be appointed for the purposes you have indicated—to act in behalf of the Brotherhood?

A. I felt that he had paid his debt to society, as a result of past difficulties with the Court; and that on the recommendation of a great many A.F.L. and C.I.O. labor organizations in Columbus, Ohio, I appointed him as the Counsel for the Brotherhood, at Columbus, Ohio.

[fol. 838] Q. All right, sir. Prior to the Illinois decision, you have indicated, when these matters came to your attention, you would inquire of Regional Counsel as to the merit of the proceeding, or the truth of the charges made?

A. Yes.

Q. Is that correct?

A. That is correct.

Q. In every case, I take it, that the explanation made by Regional Counsel was satisfactory, and was accepted by you?

A. Well, in my investigation, I determined that, if—in these various actions that had been taken against them—there was merit on both sides, it was sufficient for me to ask some competent and qualified court to give me a decision of guidance, so that I could decide—in the future—what should be done.

Q. But, in any event, you did not find it necessary, on any occasion, to relieve Regional Counsel?

A. Not before the Supreme Court decision. But, I would relieve them now, if they violate the provisions of the Supreme Court.

[fol. 839] Q. So, the local officer, whether he be the local President of the Grievance Committee, or the local Secretary-Treasurer, was under instructions to visit the injured members and advise them of the services available through the Legal Aid Department?

Is that correct?

A. Yes—

[fol. 840] Q. So that, really, the purpose of the reporting, from the local level, was to give your Regional Investigators and Regional Counsel an opportunity to contact that person, and obtain the information—the important facts—you have mentioned; that is, the circumstances of the accident?

A. I wouldn't say that that would be the essential reason. The essential reason is to protect the individual, himself, who is hurt or injured. That is the important thing.

[fol. 841] Q. To protect the individual, himself?

A. Yes.

Q. I see. So that, what you are really concerned about is the point that the Legal Aid Department have notice of the name of the injured party, the time of the injury, the place of the injury, and the address of the injured person so he could be contacted and advised that the Legal Aid Department is available—or that its services are available to him?

A. We wouldn't say it that way—that the Legal Aid Department would contact the individual—that their services were available. We would put it the other way.

We would say to this individual, that there was such a department in the Brotherhood as a Legal Aid Department, and he could contact the Legal Aid Department if he desires to have his case investigated and handled by competent, qualified attorneys.

[fol. 842] Q. So, it is only those claims which are reported by the local lodges, to the Brotherhood and its Legal Aid Department, wherein the injuries are what we might term serious, that report of such injury is given to Regional Counsel and Regional Investigators—is that right?

A. Then, we would tell the individual—we would write to [fol. 843] that individual when we get his report. We would tell him who our attorneys are. We would tell him, if he wants competent and qualified help, that the individual get in touch with the attorneys.

[fol. 844] Q. I take it, that is because of the Illinois Supreme Court decision.

In that connection, Mr. Kennedy, as part of your duties as President of the Brotherhood, you had control of at least supervised the conduct of the proceedings brought about in Virginia, in the Chancery Court of Richmond, Virginia—in a suit brought against the Brotherhood?

A. Yes.

Q. Is that correct?

A. Yes.

Q. I take it, you were consulted as those proceedings progressed?

A. Up to this time, I think they are still in progress. To some extent, I have been consulted—yes.

Q. And, in that connection, Mr. Kennedy, you did have [fol. 845] occasion to examine a document entitled, "More Particulars Furnished by Defendants," did you not?

A. Yes.

Q. And are the particulars there, furnished by the Brotherhood, through its Counsel, as set forth, to your knowledge?

A. Yes; they were furnished by Beecher Stallard, at that time.

[fol. 846] Q. And the matters therein stated are true, to the best of your knowledge?

The Witness: A. I wouldn't say they are true, or are not true. Mr. Stallard prepared this, from information that he received. There are, apparently, some facts in there that are correct.

[fol. 847] Q. First, Mr. Beecher Stallard was engaged as the attorney for the Brotherhood, in connection with this Virginia proceeding, was he not?

A. He was the attorney engaged to handle this proceeding.

Q. And he was authorized to speak for the Brotherhood in connection with that proceeding, isn't that correct?

A. That is correct.

A. I am satisfied that Mr. Stallard wouldn't have made the statements if they weren't correct. Although, I know nothing about the particular case.

[fol. 848] Q. On the question of Regional Counsel, Mr. Kennedy, these are all appointed by the President, are they not?

A. Yes, sir.

Q. And have been, since the establishment of the Legal [fol. 849] Department?

A. Yes, sir.

Q. Upon what basis are they selected?

A. They are selected on the basis that they are good, competent, and qualified attorneys, to represent the Brotherhood in all litigation that we may have presented to us in the state or the Federal courts.

Q. Is it also required that the persons who are to be appointed Regional Counsel be experienced and skilled in the handling of Federal Employees' Liability Act claims?

A. Not necessarily so. I would say that, if he is the type of attorney that we would want, it wouldn't take him long to catch up with Federal Employees' Liability Act cases.

But, that wouldn't be necessary for qualification purposes.

[fol. 850] Q. In response to certain of our interrogatories, you have indicated that, during the years from January, 1951, up to the date of your answers, that the Brotherhood received nothing in the way of money from Clifton Hildebrand.

That is, the Brotherhood received nothing by way of contribution; there was no contribution to the Legal Aid Department operating expenses—is that correct, sir?

[fol. 851] A. I think that is true. As I recall, over a period of years, and after certain action was taken in California, that thereafter we never received any money from Hildebrand.

I couldn't say as to the dates.

Q. But, it was true, during those years, other Regional Counsel—without naming them—did contribute?

A. Some did, and some did not.

[fol. 852] Mr. Biegenzahn: Q. Now, Mr. Kennedy, in your testimony, I understand that the President—Number One—appoints Regional Counsel—not Legal Counsel, is that correct?

The Witness: A. Yes, sir.

Q. And Regional Investigators, as well, is that not correct?

A. That is correct.

Q. And they serve at his pleasure, is that not correct?

A. That is correct.

Q. And the Legal Aid Department, up until April 1, of 1959, was under the direct control of the President?

A. That is correct.

Q. And the person who occupies that office supervised [fol. 853] the activities of that department, and of the Regional Counsel and Regional Investigators, is that not correct?

A. That is correct.

Q. When you accepted office, as President, Mr. Kennedy, you were not bound by any of the appointments made by Mr. Whitney, either as Regional Investigators or as Regional Counsel?

A. I was not necessarily bound by them. Unless there was some particular reason to the contrary, I would continue them.

Q. And, as a matter of fact, you did continue all who were in office—Regional Counsel and Regional Investigators?

A. That is true. I would do what the president of the railroad does, in substance. I would continue the entire personnel, unless there was some reason to do otherwise.

Q. But, your successor, as President of the Brotherhood, will have the same power—the same control?

A. That is correct.

Q. So that, so far as the policy of the Brotherhood, with respect to the operation of its Legal Aid Department, [fol. 854] or Department of Legal Counsel, is concerned, that is under the control of the man who is then President?

A. That is correct.

[fol. 855] Q. And Regional Investigators, as such, no longer exist—is that correct?

A. No; that is not correct. Do you mean, Regional Investigators?

Q. Yes, sir.

A. As far as Regional Investigators are concerned, we don't have any of the so-called Regional Investigators we had before, in the relationship of being paid.

Q. I see. In what way has it been changed?

A. We have our Secretaries of every lodge, who are investigators now.

Q. Who perform that function?

A. Yes.

Q. Without additional salary from the Grand Lodge?

A. Yes. There is no additional salary, as a result of that. Then, the group in the office conducts investigations whenever that is necessary, to help members in prosecuting their claims—whatever facts we can develop.

[fol. 856] The Brotherhood reports of the investigation is made available to the injured man, or his survivor—whatever they find is reported to the member, or his survivors.

The investigation is financed by the Grand Lodge of the Brotherhood of Railroad Trainmen. We make known to our injured members, and to their survivors, first, the advisability of obtaining legal advice, before making settlement.

Second, we submit the names of attorneys who have, in our opinion, the capacity to handle such claims successfully.

Q. Are these persons the people now designated as Legal Counsel?

A. Some of them are; some are not. We have told our members what they couldn't do, under this new law. They cannot carry contracts for the employment of any attorney.

They can't carry photostats, or settlements of any kind. That was very specific. There is to be no financial connection, of any kind, between the Brotherhood of Railroad Trainmen and any lawyer.

No lawyer can properly pay any amount whatsoever to [fol. 857] the Brotherhood, or any of its departments, officers or members, as compensation, reimbursement of expenses or gratuities in connection with the procurement of a case.

The Brotherhood of Railroad Trainmen will not fix the fees—and cannot fix the fees—for services to its members.

Basically, that was what the Illinois Supreme Court said. They said what we could do, and what we couldn't do, under the Illinois law.

[fol. 858] Q. In that regard, it is these Legal Counsel that the local officers have been instructed to recommend to injured members?

A. Yes. The Legal Counsel are the ones in the respective territory that we recommend the injured member go to. If they do go to them, they can get the information without any cost.

[fol. 859] A. To the members, upon their request.

Q. And an injured member, who employs one of the Brotherhood's Legal Counsel, will be supplied this information without cost?

A. That is right. If they ask for it, they can get the service without cost.

Q. And as to members who employ counsel other than Legal Counsel designated by the Brotherhood, some small charge will be made to them?

A. I don't know as to whether I would say that. It depends upon the circumstances. We may have a Legal Counsel that would have a territory that would be a thousand miles away.

For various reasons, somebody would want to retain a local counsel, for all intents and purposes, that had a good reputation.

[fol. 859a] We would furnish that information to them free, without asking them to pay for that service. Why? Because it would be a convenience to the individual member.

Q. For instance, if the member resided, and his accident occurred in the city in which Legal Counsel retained his office.

If he retained a lawyer, other than Legal Counsel, in that circumstance, some small charge would be made?

A. I don't know that it would. If he was an attorney in good standing with labor, he could have that information.

If he was some bird antagonistic to labor, the price would be very high. I will say that.

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[fol. 860]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA
PLAINTIFF'S EXHIBIT 3 TO DEPOSITION

SUPERIOR COURT

STATE OF WASHINGTON
COUNTY OF SPOKANE

No. 146745

HENRY OPENDACK, for himself as an ACTIVE MEMBER OF THE
WASHINGTON STATE BAR ASSOCIATION, and as REPRESENT-
ATIVE OF A CLASS WITH LIKE INTEREST,

Plaintiff,

-VS-

TOM DAVIS, EUGENE A. RERAT, CARL L. YEAGER, PHILIP B.
LUSH, CLARENCE B. MCGLINEY, DON CHAPMAN, OWEN A.
JOHNSON, H. W. DONAHUE, WILLIAM J. DIEHM, BROTHER-
HOOD OF RAILROAD TRAINMEN'S UNION LOCAL 307, BROTHER-
HOOD OF RAILROAD TRAINMEN, an international railroad
union, JAMES A. PATTERSON, individually and as Secre-
tary of Local and Agent of International, SWITCHMEN'S
UNION OF NORTH AMERICA LOCAL NO. 137, SWITCHMEN'S
UNION OF NORTH AMERICA, an international railroad
union, and EDWIN O. LUNDBERG, individually and as Sec-
retary of the Local and Agent of the international,
Defendants.

FILED

May 21, 1957

Geo. E. Fallquist, Clerk
SPOKANE COUNTY

ANSWERS OF THE BROTHERHOOD OF RAILROAD
TRAINMEN TO PLAINTIFF'S INTERROGATORIES

1. Does the union have a legal aid department?
Yes, the union has a legal aid department, the nature of
which is described below.
2. Tell us the physical makeup of the legal aid depart-
ment.

Respondent believes that the word "*physical*" in the above interrogatory is a mistyping of the word "*fiscal*" and answers that interrogatory accordingly since respondent does not understand what is meant by "*physical*" makeup of the legal aid department but does understand and is able to describe the "*fiscal* makeup" thereof.

[fol. 861] The legal aid department has headquarters at 1370 West Ontario, Standard Building, Cleveland, Ohio. The headquarters are staffed by clerical personnel whose chief function is to coordinate and keep records. No law business of any kind is transacted in the headquarters. Fifteen regional counsel, appointed by W. P. Kennedy, President of the Brotherhood, are available to serve the Brotherhood as an entity and its members or their survivors in claims arising out of railroad employment, including claims arising out of personal injuries to or the deaths of such members when such injuries occur in or such deaths result as a consequence of railroad employment. Chairmen of local lodges are required to, and regularly do call upon injured members or the survivors of members killed in railroad accidents, inform such injured members or such survivors that they may without cost or expense consult regional counsel, urge such members, or such survivors of members to employ regional counsel to initiate litigation or negotiate for settlement, either arrange to have representatives of regional counsel call upon such injured members or survivors of deceased members, bring such members or survivors of deceased members to the office of regional counsel and assure such injured members or survivors of deceased members that regional counsel will not charge more than twenty-five per cent of the avails of recovery for fees and expenses of litigation, no charge being made if there is no recovery. In appropriate cases, such chairmen or other representatives state that regional counsel will or may make monetary advances for hospital and living expenses. Such chairmen are compensated by regional counsel for their time and efforts expended in the manner above described. [fol. 862] The legal aid department also hires full-time investigators, whose duty it is to investigate accidents in which members have been injured or killed.

The several regional counsel contribute ratably to the expenses of the legal aid department, that is, to the expenses of maintenance of the above-mentioned office in Cleveland

and to the expenses of the discussion of legal aid matters at conventions of the Brotherhood. The expenses of the discussions of legal aid matters at such conventions are computed by taking the total cost of the convention and allocating against such costs the ratio of the number of minutes spent at the convention in discussing legal aid matters as against the total number of minutes spent in convention.

[fol. 863] 7. Under the Brotherhood's constitution, by-laws, etc., when a union member is injured or killed in railroad operations, is it not only the right and privilege, but the duty and obligation of member representatives of the Brotherhood, usually the chairman of the Grievance Committee, in the locale of the accident to call upon the injured member or his bereaved family, and not only explain to them that they can, but recommend and urge that they do consult with the regional counsel?

Yes.

8. Is it not a fact that the representatives not only urge members or survivors of the deceased members, not only to consult, but to retain, regional counsel?

Yes.

9. Is it not a fact that members are told that regional counsel are not permitted to, and will not, charge, in the excess of 25%, of the amount of any recovery, and that this percentage will include expenses incidental to the investigation, and any litigation of the claim?

This is the rule. However, I am not in a position to state what has been told in every instance.

10. Is it not a fact that the local chairman or other member representatives of the union are reimbursed for their time in bringing injured members, or the survivors of deceased members to the offices of regional counsel?

Yes.

[fol. 864] 15. Is it the duty of the local chairman of any lodge of the Brotherhood to call immediately upon any member of the lodge who has been disabled by illness or injury, sustained in the course of his employment by a railroad?

Yes.

16. Are the Regional Counsel, as part of the Legal Aid Department, permitted to make cash advances to injured members, pending litigation?

Yes, but not required to.

17. Are such cash advances actually made?

Yes, in some instances.

[fol. 865]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 78

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.:

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

No. 727 273

SOUTHERN PACIFIC COMPANY, a corporation,
Plaintiff;

vs.

CLIFTON HILDEBRAND, et al.,
Defendants.

W. P. KENNEDY, Individually, and in a representative capacity for and on behalf of the BROTHERHOOD OF RAILROAD TRAINMEN, an international labor organization, its officers and members,

Cross-Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation; SOUTHERN PACIFIC COMPANY, a corporation; ASSOCIATION OF AMERICAN RAILROADS, an Illinois Corporation; and DOES 1 to 400, inclusive,

Cross-Defendants.

Deposition of C. R. Maher, a witness herein, taken on behalf of the Plaintiffs, at 7:00 o'clock, P. M., Wednesday, October 5, 1960, at Suite 810, 139 North Clark Street, Chicago, Illinois, before Martin E. Woolsey, a notary public in and for the County of Cook, State of Illinois, pursuant to stipulation.

[fol. 866] Direct examination.

By Mr. Biegenzahn:

Q. Now, will you state your full name, sir?

A. C. R. Maher, M-a-h-e-r.

[fol. 867] Q. What is your present employment, Mr. Maher?

A. I am chief clerk to President Kennedy, President of the Brotherhood of Railroad Trainmen.

Q. And in what department of the Brotherhood are you employed?

A. I am assigned by President Kennedy to supervise the operation of the Department of Legal Counsel.

Q. And when was that appointment made, sir?

A. I was appointed on March 22, 1954.

[fol. 868] Q. Will you indicate to us what offices or positions you have held with the Brotherhood either at the local level or at the Grand Lodge level during the course of your employment?

A. Well, I have held every elective office in the Subordinate Lodge to which I belonged, that is 583 in Danville, Illinois, with the exception of delegate to the International Convention.

[fol. 869] Q. When did you first go to Cleveland, Ohio, on a permanent basis in connection with your work with the Grand Lodge?

A. Well, I have served two hitches in the Grand Lodge of the Brotherhood. I first went to Cleveland on June 1st, 1947.

Q. And in what capacity did you serve at that time?

A. As manager of the then known Legal Aid Department.

[fol. 870] Q. All right.

And for how long did you serve in that capacity?

A. I served until February 1st, 1948.

Q. And you were then succeeded by whom?

A. By Steve Lush.

Q. And when was Mr. Lush replaced by Mr. Lee?

A. Mr. Lush retired, I don't know the exact date, but I believe it was July 1st, 1950. I might be a year off on that. It was either 1950 or 1951.

Q. And Mr. Lush, or rather Mr. Lee, succeeded Mr. Lush, is that right?

A. Yes, M. M. Lee, commonly known as Pinky, was appointed by the then President Whitney to—no, wait a minute—yes—no, wait a minute. Whitney died in 1949. By Kennedy to succeed Steve Lush.

Q. All right.

And Mr. Lee served then as manager of the Legal Aid Department until—

A. Until his death March 16, 1954.

Q. And it was at that time that you were appointed again to succeed Mr. Lee in that position?

A. Yes, and went into the job on March 22nd, 1954.

Q. All right. During the period 1948 when you were [fol. 871] relieved as manager of the Legal Aid Department until you again assumed the duties of that office in 1954, what was your employment?

A. I was an investigator for the Brotherhood of Railroad Trainmen.

Q. That is a regional investigator?

A. Yes.

Q. And to which regional counsel were you assigned?

A. To then Edward B. Henslee, Sr.

Q. In Chicago here?

A. Yes.

Q. And you worked—

A. That is, I was assigned to operate in Edward B. Henslee's territory.

[fol. 872] Q. Now, from the time that you first were appointed manager of the Legal Aid Department in 1947, until you again assumed those duties in 1954, had there been any

changes in the organization or the operation of the Legal Aid Department?

A. Well, not to my knowledge, between those dates.

Q. And from 1954 until the present time, had there been any substantial changes in the organization or operation of the Legal Aid Department?

A. Yes, there had.

Q. When did these changes occur?

A. The changes occurred on April 1st, 1959.

Q. I see.

So until that date, that is April 1, 1959, the operation and organization of the Legal Aid Department had been the same from the time that you were first appointed as manager in 1947?

A. Well, substantially the same, yes, until the change on April 1st, 1959.

Q. And prior to 1947, when you were appointed manager of the Legal Aid Department, I assume that in so far as you were aware, the organization, the operation of the Legal Aid Department, had been the same from its organization [fol. 873] in 1930 until 1947?

A. As far as I knew, yes.

Q. All right.

Will you describe for us, Mr. Maher, the organization of the Legal Aid Department as you found it when you assumed the office of manager in 1947?

A. Well, I found that there was an office established in the Grand Lodge headquarters.

Q. That is in the Standard Building?

A. In the Standard Building in Cleveland, Ohio, a suite of offices, rather, I should say. Up until my appointment to succeed M. M. Lee, the title of the supervisor of the department had been manager of the department.

The staff varied at times. When I came into the office in 1947, there was a staff of four stenographers and one file clerk. The number on the staff is varied from time to time. There were occasions when correspondence was so heavy [fol. 874] that an additional stenographer might have to be borrowed, or was borrowed. There were times when the correspondence fell off when the staff could be cut and was

cut, and a stenographer transferred to another department.

Q. You have indicated that that was the situation until 1954 when you were again appointed to the Legal Aid Department?

A. The office was in the same location in the headquarters of the Brotherhood when I came in there in 1954, as it was when I went in there in 1947.

Q. But your title then became chief clerk rather than manager of the Legal Aid Department?

A. That is right.

Q. And you continued with the same duties at least until April 1st of 1959?

A. That is right.

Q. And during that period from 1954 to 1959 your official designation was that of chief clerk of the Legal Aid Department?

A. Yes, that is right.

Q. And during the period 1954 to April 1st, 1959, the staff in the Legal Aid Department remained the same?

[fol. 875] A. That is right.

[fol. 876] Q. Now, will you describe generally the nature of the records kept by the Legal Aid Department?

A. Well, yes; they are records starting from the LA-1 report which is sent into the Grand Lodge and wind up in my department by the secretaries of the various subordinate lodges in the United States.

Q. Will you indicate generally of what that form consists?

A. Well, it is a printed form or blank, up in the upper left-hand corner it is designated by the initials capital L, capital A dash one, the date of the printing of the form is included in that upper left-hand corner, and it is the form which is sent out by the Grand Lodge principally my department to the secretaries of the various subordinate lodges in the United States.

Q. And the secretaries are instructed to complete this form whenever a member is injured or killed, is that correct?

A. That is right. That is designated as part of the secretary's duties by the Brotherhood Constitution.

Q. And what information usually does the LA-1 report contain?

A. Well, first of all it contains the member's name, his [fol. 877] age, his address, his home address, the city where he resides; there is a space for his Social Security number; there is a space for his telephone number. I don't recall the exact wording of the phrases on each question, you might say on the blank, but there is a space, where the accident occurred. There is a space, what occurred. There is a space, nature and extent of injuries. There is a space, married. There is a space, wife's name. There is a space, dependents. There is a space for the signature of the secretary or the member or the representative whoever might send in the LA-1 report. There is occasions when the secretary might be sick or for some other reason may designate the duty of sending in the report to some other subordinate lodge officer or member.

Q. But the sole function of the LA-1 report is to advise the Legal Aid Department that an injury or death has occurred to a member while in service?

A. That a member has been injured or killed; yes, sir.

Q. Is the LA-1 report form still in use?

A. Yes.

[fol. 878] **Q.** Now, when you receive an LA-1 report, do you in the Legal Aid Department, then prepare a separate [fol. 879] file for the member injured?

A. Yes.

Q. And all correspondence and other writings relating to his case are kept in that special file?

A. Kept in that special file; yes, sir.

Q. And these files, I take it, are considered as one of your permanent records?

A. Yes.

Q. Now, what records other than these four forms that you have just described to me, do you keep in the Legal Aid Department?

A. Any correspondence that we might receive in connection with this particular accident or the injuries to this member.

Q. I see. Now, Mr. Maher, as I understand it, certain regional investigators, at least up until April 1st of 1959, were paid salaries by the Brotherhood, is that not correct?

A. Yes.

Q. And were the records covering payments of salaries to these regional investigators kept in the Legal Aid Department?

A. Yes.

[fol. 880] Q. You have indicated that financial records of the transactions with which the Legal Aid Department was concerned were kept by the Legal Aid Department?

A. Yes.

Q. And what, generally, did these financial transactions consist of?

A. Well, now, what period are you referring to?

[fol. 881] Q. Well, during the period when you first became connected with the Legal Aid Department in a supervisory capacity in 1947 until April 1st, 1959, when the set up was changed to some extent.

The Witness: A. Well, during my first period of service in the department, whatever financial connections there were between the attorneys and the Brotherhood were the submission of the various Brotherhood, then known as regional counsel, to the Brotherhood of Railroad Trainmen, paying their proportionate share of the cost of the operation of the department.

Q. And this practice then of keeping records of submissions, as you call them, continued right up until April 1st of 1959, is that not correct?

A. During my regime in the office, yes, sir.

Q. And during the period while you were not manager or chief clerk, this practice continued?

A. Well, I don't know. That I can't say.

Q. You have seen the records?

A. I presume that they did continue to operate that way, yes.

Q. All right. During the period when you were in office as a manager or as chief clerk, in what book or books was

the records of payments by the various regional counsel kept?

A. They were kept in our own books, in our own records and supposedly kept under lock and key.

Q. All right. What form did these records take? Were they in a bound book?

A. They eventually wound up in a bound book, yes, sir.

Q. And what period of years is covered by the bound book to which you refer?

A. Well, I can only answer for the time that I have been in the office.

Q. Yes, that is from 1947 to—

[fol. 883] A. No, I would say from 1954 until the present time.

Q. At least during the period of 1954 to the present time they are collected in one book, the records reflecting financial contributions made by the regional counsel to the Legal Aid Department, is that not correct?

A. That is correct.

[fol. 884] Q. All right. Now, in the records which you keep of financial transactions between the Brotherhood and its regional counsel, is there more than one book?

A. Well, now, there may be more than one book. One book might possibly have been used up and another book followed up to keep the records up to date.

[fol. 885] Q. Who in your office makes entries in these books relating to the finances as between the Legal Aid Department and the regional counsel?

A. Well, usually I use one of the staff who is usually the senior girl in the office to keep those records.

Q. Who is presently the senior girl?

A. Her name is Virginia Brazeal Clark.

[fol. 886] Q. Now, during the periods when you have been either manager or chief clerk of the Legal Aid Department, it was you, I take it, who determined the pro rata [fol. 887] share of the expenses of operating the Legal Aid

Department which was to be paid by each of the various regional counsel, was it not?

A. It was through my supervision, yes.

Q. And how was this computation made; what was the basis for it?

A. The basis was computing the total settlements made [fol. 888] by all of the regional or legal counsel, all of the regional counsel, the grand total of all of the settlements made were based as one hundred per cent. Then—I am not a bookkeeper, I am not an accountant; to my knowledge, the girl who has been keeping the records is not an accountant, so I took these figures to the comptroller—not the comptroller, but the chief accountant in the Grand Lodge, and asked him to figure out the percentage of the total one hundred per cent settlements. This one hundred per cent was broken down into the amounts of settlements made by each individual or firm of legal counsel, and I asked this chief accountant to break that down into the percentage of the one hundred per cent, which each firm or counsel furnished us for the year.

Q. In other words, if it were determined that the total dollars, amount of dollar settlements made by all regional counsel in one year were ten million dollars, for instance, and one of the regional counsel had recovered settlements in the amount of one million dollars, he would pay them ten per cent of the total cost of operating the Legal Department, is that correct?

A. Well, I don't know that it would break down to an [fol. 889] actual ten per cent. The counsel who did the most business during the year, or maybe most settlements, received the largest amount of settlements, naturally was at the top of the list.

Q. Yes. In other words, to put it in general terms, each regional counsel would contribute a pro rata share in proportion to the amount of recoveries obtained by him bore to the total amount of recoveries obtained by all regional counsel?

A. Yes.

Q. In discussing this you have used the word "settlement," but I assume by that you mean the dollar amount recovered, whether by settlement or by suit?

A. Well, we didn't differentiate between settlements or suits. It was just the recovery of an amount.

Q. Yes. But I take it that it was the amount recovered by regional counsel either by a settlement or suit in behalf of members of the Brotherhood only?

A. That is right.

Q. That was taken into account?

A. That is right. We keep no records of the non members of the Brotherhood.

Q. And how were the total recoveries made by each [fol. 890] of the various Brotherhood counsel on behalf of the Brotherhood members obtained by the Legal Department?

A. Well, there were only two ways, either by negotiation or by jury verdict.

Q. No, I meant how did the Brotherhood determine how much any particular regional counsel had obtained for members by way of settlement or suit during any particular year?

A. Because that is one of the requirements of the Brotherhood, that the counsel furnish to the Grand Lodge of the Brotherhood the number of settlements he has made and the amounts recovered in each individual case.

Q. In other words, the Brotherhood required that as regional counsel concluded each case for any member of the Brotherhood, he would report to the Legal Aid Department the amount of the recovery obtained on behalf of that member?

A. Yes, sir.

Q. All right. And during this period, that is, while you were either manager or chief clerk of the Legal Aid Department, Mr. Hildebrand and his firm contributed their pro rata share?

A. Mr. Hildebrand didn't contribute. Mr. Hildebrand [fol. 891] individually didn't, nor his firm didn't contribute.

Q. All right.

Did the regional investigators associated with his office contribute?

A. As far as I know they did.

Q. They did contribute?

A. Yes.

[fol. 892] A. The notice of the assessment allocated to each counsel was sent to the counsel. Cliff Hildebrand, ever since I have been on the job, was sent notice that his proportionate share for the operation of the department would be so many dollars.

Q. I see.

A. I never received a check for any amount from Cliff [fol. 893] Hildebrand.

Q. But in each year in which you sent Mr. Hildebrand a statement indicating the amount or his pro rata share, this amount was ultimately paid by someone to the Legal Aid Department?

A. There was a cashier's check came in, yes, made out to the Brotherhood of Railroad Trainmen.

Q. And the amount received by way of check or cash in this fashion was credited to Mr. Hildebrand's account?

A. To that region. I don't give a damn where the money came from as long as it came in.

Q. Sure. But as to the rest of the regional counsel, when they were assessed for their share of the operating expenses, they would properly remit their checks in the amount of the assessment, didn't they?

A. Some of them did and some of them didn't.

Q. Well, as to those that didn't, was it a case of never paying or that it came through from some other source?

A. No, it never came through some other source. I don't know what the occasion was unless it was to comply with certain State regulations.

[fol. 894] Q. I see. But is it fair to state that the majority of the regional counsel paid the assessment made?

A. Yes, that is a fair statement.

Q. All right.

Now, assuming that these seven pages contained in Plaintiff's Exhibit 9 (Nelson's Exhibit A) are copies of the records of the Brotherhood, I note that during the year 1957 the Henslee firm did not pay anything on their account. Do you recall that?

A. Yes, I seem to recall that.

Q. And that was pursuant to directions of W. P. Kennedy that this firm should not be assessed for the years 1955, 1956 or 1957, is that not correct?

A. Yes.

Q. And what was the reason for that firm not being assessed for a portion of the operating costs during those years?

A. At that time, during those years there was no firm in so far as the Brotherhood was concerned; it was Edward B. Henslee, Counsel of the Brotherhood of Railroad Trainmen. Edward B. Henslee was also, in addition to being legal counsel, had been appointed General Counsel for the Brotherhood of Railroad Trainmen by President Kennedy. [fol. 895] Q. So that so far as Mr. Henslee, that is Edward B. Henslee, Sr.?

A. Edward B. Henslee, Sr.

Q. So far as he was concerned, he was not called upon to contribute because he had rendered services as legal counsel?

A. He had rendered services to the Brotherhood as General Counsel and legal counsel, which would, I would say, much more than consume what he would owe the Brotherhood.

Q. I see. And during that same year, 1957, it is indicated that Davis, Rerat, Yaeger & Lush made no contributions, but I see that Rerat, individually, Yaeger, individually, and Lush and Davis made individual contributions. I take it from that that the reason that the firm made no contribution is because the individual members made their own pro rata contribution?

A. That is the way I take it, yes, as members of the firm.

Q. All right.

Now, during the period when you have been either manager or chief clerk of the Legal Aid Department, Mr. [fol. 896] Maher, whenever you had problems or any questions that you did not think you could or should dispose of yourself, you consulted with Mr. Kennedy, did you not?

A. Yes, sir.

Q. And he was the only person within the organization with whom you consulted concerning these matters?

A. No, I won't say he is the only person I consulted. He is the only person I consulted who could give me authority to do something about which I might have been puzzled.

Q. I see.

In other words, beyond the limits of your own authority, you had to look to Mr. Kennedy and to Mr. Kennedy alone for such additional authority as you might need?

A. Yes, sir.

Q. Now, during the years 1954 up to April 1st of 1959, Mr. Maher, what were the average annual operating expenses of the Legal Aid Department?

A. Oh, it varied. I would say that it would vary between the amounts of \$75,000.00 and \$100,000.00.

[fol. 897] Q. And this did not, I take it, include salaries, your salary or salaries of the permanent personnel within the department?

A. Yes, that did include them.

Q. It did include these salaries?

A. Yes.

Q. Now, those regional investigators, Mr. Maher, that were paid by the Brotherhood, I take it, were paid through the Legal Aid Department?

A. No, they were paid through the Brotherhood of Railroad Trainmen. They got the same kind of checks that any employee of the Brotherhood of Railroad Trainmen gets.

Q. I see. Were you advised that payments were made by the Brotherhood to these individuals?

A. You mean every check that went out?

Q. Yes, sir.

A. No, I knew that they were on the Brotherhood payroll at so much per month.

Q. Were you provided with, in substance, recapitulations of payments made by the Brotherhood to these regional investigators at other periods?

A. Well, I had a record of how many Brotherhood Investigators were on Brotherhood salary. I knew how much [fol. 898] salary they received from the Brotherhood, so the salary checks went out twice a month from the Grand Lodge of the Brotherhood, checks signed by the president and the general secretary and treasurer.

Q. During the years 1954 to April 1st, 1959, isn't it true that all of the regional investigators appointed by the

Brotherhood, by Mr. Kennedy, were assigned to specific territories?

A. Yea.

Q. And each of them worked in conjunction with a regional counsel?

A. They worked in harmony and conjunction with regional counsel, yes.

Q. In substance, pursuant to instruction of regional counsel?

A. Well, if it pertained to anything in connection with what the legal or the regional counsel or legal counsel wanted investigated, anything pertaining to a particular case, they were under the counsel's direction.

[fol. 899] Q. And isn't it true that a regional investigator would be put on salary by the Brotherhood only at the specific request of a particular regional counsel?

A. Well, that is true in some instances; in all instances it wasn't.

[fol. 900] Q. Now, as to those regional investigators, who were placed on salary at the request of regional counsel, were their salaries charged against the operating expenses of the Legal Aid Department?

A. Yea.

Q. But as to those regional investigators who were placed on salary without the request of regional counsel, were their salaries charged against the operating expense of the Legal Aid Department?

A. No.

Q. And as to those regional investigators whose salaries were charged against the operating expenses of the Legal Aid Department, the Legal Aid Department was reimbursed by the regional counsel who the particular investigator served?

A. That is right.

[fol. 901] Q. I see, sir.

In other words, from the Legal Aid Department stand-

point, this was merely a bookkeeping matter, that is the salaries paid to Bockhold and to Dragmire?

A. Well, yes, exactly.

Q. And no money was actually paid out by the Brotherhood that was not promptly returned?

A. Well, in the matter of salaries, yes.

[fol. 902] Q. Now, with respect to the operations of the Legal Aid Department during those periods when you acted as manager or chief clerk, will you describe generally how the machinery of the Legal Aid Department was set in motion by injury to a member? You understand that question?

A. Yes. The machinery was set in motion when my department received the LA-1 report of the accident.

Q. All right. And upon receipt of the LA-1 report, what steps were taken by the Legal Aid Department?

A. Up until April 1st, 1959, copies of the LA-1 reports were sent to the counsel in the area to which the subordinate lodge was allocated, and to the Brotherhood investigator who was assigned in that area.

Q. All right. The first step then upon your receiving a [fol. 903] LA-1 report, you would prepare a copy of it and forward, prepare copies of it, forward one to regional counsel in that area, and one to regional investigator in that area?

A. That is right.

Q. Then what was the next step that you took?

A. Well, there might have been various steps that I might take.

The first step would be if I didn't get a report from the investigator, especially within what I considered a reasonable time, my first step would be to follow up and find out why he hadn't sent that report in.

[fol. 904] Q. During this period, each of the regional investigators was responsible to a particular regional counsel, wasn't it?

A. Yes.

Q. Now, at about the time that you received the LA-1 report, wasn't it your practice at least in those cases where the injury appeared serious, to write a letter to the injured member advising him of the availability of the services of the Legal Aid Department and indicating the name and address of the regional counsel for his area?

A. There were occasions we did that.

Q. And wasn't that your practice with respect to those cases where the injury appeared serious?

A. Well, yes, the majority of the time that was my practice.

[fol. 905] Q. And didn't you routinely send a copy of that letter to the regional counsel who was mentioned in the letter?

A. There were times when I did, yes.

Q. And what was your purpose in doing that, Mr. Maher, sending a copy to the regional counsel?

A. My purpose was to try to see that the injured member received the service, or was advised of the protection which was available to him.

Q. And you sent a copy of the letter to the regional counsel so he would know the man had been injured, know where he could be found and could contact him and advise him concerning his rights, that he was available to serve him; isn't that correct?

A. I let the counsel know where the man was, yes.

Q. And for that purpose, so that he could contact him and advise him of his rights and make known he was available and could serve him?

A. Well, if I sent him the address of the man, certainly he could contact him.

[fol. 906] Q. Now, Mr. Maher, isn't it true that in your contacts with regional investigators you have routinely instructed them that they should advise and inform injured members that the services of the Legal Aid Department are available?

A. Yes.

Q. And that they may consult with regional counsel for

advice concerning the handling of their claim and this without charge?

A. If they so desire.

Q. Yes. And you have also routinely instructed regional [fol. 907] investigators and local officers, where the occasion arose, that they should advise injured members that they should be careful of claim agents and should not give them statements?

A. Yes, sir.

[fol. 908] Q. Now, Mr. Maher, you have indicated that on April 1st, 1959, pursuant to direction of Mr. Kennedy, certain changes were made in the Legal Aid Department. Will you describe these changes?

[fol. 909] A. Well, the one change that was made was the change in the title of the departments abolishing the title of Legal Aid Department and establishing the title of Department of Legal Counsel with the additional title of Department of Research and Investigation.

Q. Well, the Department of Legal Counsel then and the Department of Research and Investigation, I take it, are still one and the same?

A. Well, the duties in connection with either or both departments are co-related.

Q. I see. And you still remain as the head of these departments?

A. Yes. I might add to that, under the direct supervision of President Kennedy.

Q. Yes. All right.

Now, what functions are performed by the Department of Legal Counsel as opposed to the Department of Research and Investigation?

A. To represent the Brotherhood in any legal matter which would pertain to the welfare of the Brotherhood in general, or any department thereof, and when employed by an individual member of the Brotherhood of Railroad Trainmen to handle the individual case under the provisions of the Federal Employers Liability Act.

Q. Now, as to those cases which are handled by legal

counsel as the regional counsel are now designated for an injured member, I take it that their fee is not paid by the Brotherhood?

A. No, their fee is not.

Q. That is a matter strictly between the injured member and the regional counsel?

A. Yes, sir.

Q. But as to those matters which legal counsel handle in behalf of the Brotherhood, I take it that they are paid a fee by the Brotherhood?

A. Yes, they are.

Q. And is this fee paid through the Department of Legal Counsel?

A. No, it is paid directly out of the general fund of the Brotherhood of Railroad Trainmen.

Q. All right. And the bill of the legal counsel for this sort of service is submitted then directly to the Brotherhood or is it submitted to the Department of Legal Counsel?

A. It is usually, the majority of times, addressed directly to President Kennedy.

[fol. 911] Q. Do you have any records in the Department of Legal Counsel of fees paid by the Brotherhood to legal counsel since April 1st of 1959?

A. I have some records, yes. I don't know whether I have all of them or not, but that is of all of the fees that have been paid to all of the counsel.

Q. And how are the records that you have kept, are they in bound ledger books?

A. Eventually they are entered into our ledger books only if service which the counsel performs for the Brotherhood has any bearing upon the Department of Legal Counsel.

[fol. 912] Q. Yes. Now, I take it that under the new set up you still retain and use the LA-1 report?

A. Yes.

Q. And it is used in the same fashion?

A. The same as it has always been used in.

Q. And the FLA-2 report is likewise retained and used in the same fashion?

A. That is right.

Q. This is also true of the FLA-2D report?

A. That is right.

Q. And the same is true of the special accident form, [fol. 913] is it not?

A. That is right.

Q. Now, as I understand it there has been some change in the situation of regional investigators; will you describe what changes were wrought on April 1st of 1959 in this regard?

A. Well, the major change that has been made is that there are no investigators now on the Brotherhood salary.

Q. Are there any longer any regional investigators?

A. You mean investigators as such?

Q. Yes.

A. Yes, there are many members who are still designated as investigators and carry the cards that were issued to them by President Kennedy.

Q. I see. But these men are not on salary from the Brotherhood any more?

A. No, they are not.

Q. And I take it they are compensated by legal counsel in the various areas in which they operate?

A. There are many of them who have never been compensated by anyone.

Q. But those who are compensated, they are now compensated by legal counsel?

[fol. 914] A. I don't know how they are being compensated; they are not being compensated by the Brotherhood.

Q. But substantially all of those people who were designated as regional investigators prior, immediately prior to April 1st, 1959, they are still designated as regional investigators?

A. There are some who are still designated as regional investigators, yes.

Q. All right.

You indicated earlier that there were during the period 1954 to 1959, approximately fifty regional investigators. How many now are still designated as regional investigators?

A. Oh, I would say possibly half that number.

Q. Twenty-five?

A. About twenty-five, yes.

Q. And none of these people are paid by the Brotherhood?

A. None of them; that is right.

Q. And as to these twenty-five, I take it that they devote [fol. 915] their full time to investigative work, don't they?

A. No, I wouldn't say they devote full time.

Q. Well, substantially full time then?

A. No. My answer to that is that there are some members of the Brotherhood carrying investigator cards and designated as Brotherhood investigators who have been issued that card because they consider it an honor to carry that card, and they don't expect any compensation for anything they might do for the Brotherhood.

Q. I see. But these men are instructed by you or by Mr. Kennedy to perform investigative work, is that correct?

A. Those investigators who I just mentioned, if they get any instructions from President Kennedy, I am never notified of that fact.

Q. And you don't give them any yourself?

A. No.

Q. Now, I understand from Mr. Kennedy's testimony that under the old set up the copies of the LA-1 report were routinely sent to regional counsel, that is correct, isn't it?

A. Yes.

[fol. 916] Q. Under the new set up though I understand copies of this report are not sent to regional counsel?

A. They are not.

Q. Are regional counsel or legal counsel under the new set up advised of the occurrence of accidents and the names and addresses of the injured persons through any other means other than the copy of the LA-1 report?

A. That I can't answer; I don't know.

Q. Well, have you advised legal counsel under the new set up at any time of the occurrence of an accident and the name and address of the injured member?

A. I have not.

Q. Is this a function that is now performed by the local lodge officers; that is the secretary or other personnel?

A. Well, if it is performed that would be the only manner in which I could figure out that legal counsel would get that information. I don't know. I am not furnished copies of this report.

[fol. 917] A. There are no copies; since July 1st, there are no copies of any reports go to any investigators or any counsel.

Q. Is that July 1st of this year?

A. Last year. That was the absolute deadline which was established by the Supreme Court of Illinois in which the Brotherhood was required to get their house in order.

Q. To pin it down very carefully, Mr. Maher, am I correct in my understanding that you have not, yourself, either by letter, phone call or otherwise advised legal counsel of the occurrence of an accident or the name and address of the injured member?

A. That is correct.

Q. At any time since April 1st of 1959?

A. No, I won't say from April 1st; I say from July 1st. Now, there may have been inadvertently between April 1st and July 1st, because of the fact that someone on my staff hadn't got established to the new method of operation, that there might have been accidentally a copy of a report sent out to a counsel.

[fol. 918] Q. I see. But this would be pursuant to action, independent action, taken by one of the persons working under you and without your knowledge?

A. That would be it, yes.

Q. Since April 1st of 1959 have any of the legal counsel made any payment or contribution to the Department of Legal Counsel or to the Department of Research and Investigation?

A. No, they have not.

Q. Have any payments been received by the Brotherhood and credited to the account of these legal counsel since April 1st of 1959?

A. No, there has not.

Q. Have any of these legal counsel who have performed services for the Brotherhood since April 1st of 1959, and

who have submitted bills to Mr. Kennedy, not received payments?

A. Not to my knowledge. The Brotherhood is always pretty prompt in paying its bills.

Q. All right. Since April 1st of 1959, have any persons designated as regional investigators paid any money to the Brotherhood other than as dues, as membership dues? [fol. 919] A. No.

Q. Have such persons as regional investigators since April 1st, 1959, been credited for amounts received by the Brotherhood from any source?

A. May I have that question again? Any of these persons you mean?

Q. The regional investigators.

A. Would you read that question?

(Question read.)

The Witness: A. No, they have not.

Mr. Biegenzahn: Q. Now, Mr. Maher, aside from the changes that we have already covered, have there been any other changes in the Legal Aid Department since April 1st of 1959?

A. No, there have not.

Q. In all other respects its operation and organization continue the same?

A. Yes, sir.

[fol. 920]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT PX12

(Letterhead of Brotherhood of Railroad Trainmen,
Cleveland 13, Ohio)

[Emblem]

Air Mail

Re: Edward T. Hays—Lodge 864

January 24, 1956

Mr. Edward T. Hays
1006 South Yakima Street
Tacoma, Washington

Dear Brother Hays:

May I have your attention and that of your wife for a few moments. It may save both of you much inconvenience and misery later on.

Perhaps you have never met me or have never heard of me—but that is immaterial. I am an "old rail" who started working around box cars, just like you, in 1913. Since then I have seen many serious accidents, some of them fatal, and I know from close personal relationships the sorrow, insecurity, and sometimes tragedy which follows in the wake of all serious accidents.

I do not believe in writing "tear jerker" letters. I do believe, however, in telling any or all of our members and their dependents a few things about the reality of the problems which face them in the time of misfortune, with the hope that whatever I say will help them solve those problems, so that they will not be cast aside upon the refuse pile of industrial progress.

A few days after you were so unfortunately and unnecessarily injured I was notified, as required by our Brother

hood Constitution, by Brother W. H. Shonka, the secretary and treasurer of your lodge. This is his duty and is a requirement of the Brotherhood, so that whatever steps necessary can be taken either through legislation or otherwise to protect our members not only against the many hazards of their occupation, but also against many of the tragic consequences which all too often follow in the wake of serious injuries or death to the breadwinner.

In my letter of November 20 addressed to Brother Shonka, a copy of which you received, and which I hope both you and your wife read, I briefly suggested that you refrain from giving any statement to any representative of the railroad, particularly a claim agent, before you had an opportunity to be fully advised as to your rights under the law by some attorney well versed and experienced in [fol. 921] handling claims arising under the Federal Employers' Liability Act. I suggested that you be very careful in your dealings with the railroad claim agents; and I did so because it has been the sad experience of the Brotherhood that when any of our injured members fall under the spell of the claim agent's personality or verbal promises, the results have been unfavorable and often disastrous.

Perhaps a little explanation of the function of the claim agent would be proper at this time. The claim agent is hired to save money for the railroad. The claim agent performs no production work, such as switching cars or taking a train over the road. His job is to soften up injured members or the dependents of those killed in the line of duty, so that when a settlement is made, it will cost the railroad much less than the amount to which the injured member or his dependents are entitled. The money saved by the railroads goes to pay wages in the claim department and dividends to the stockholders.

You will see, therefore, that the job of the claim agent is definitely not humanitarian—it cannot include compassion. It is not his duty to see that the injured member is adequately compensated for the loss of his limbs, his pain or suffering, his loss of earning capacity, as well as the full enjoyment of his family. He may pretend that he is doing this—but his job is to save the company money.

Perhaps you and your wife are wondering why we of the Brotherhood are concerning ourselves with you now that you no longer work around box cars. If you had been a member for many years, you would have found that the Brotherhood is interested in every problem which faces our members in connection with their work on the railroad.

Even before the turn of the century when so many of the railroaders were being seriously injured or killed because of inadequate safety devices and safety procedures, our Brotherhood, along with the other operating Brotherhoods, petitioned the Congress of the United States for federal laws to protect our members against the basic hazards of their occupation.

Even after the Safety Appliance Acts and other laws were passed, it was found that the railroads were still failing to furnish our Brothers with a safe place to work; and after accidents, the injured members or their dependents had no way to obtain adequate compensation for the damage they had sustained.

A movement, therefore, was started, spear-headed by many prominent humanitarians such as the Honorable Edward A. Moseley, Secretary of the Interstate Commerce Commission, and some high-minded Congressmen, as well [fol. 922] as the Brotherhoods, to obtain a law strong enough to enable the injured to obtain reasonable compensation. When this law was passed in 1908, called the Federal Employers' Liability Act, we of the Brotherhoods thought that the troubles of our members were over; but, unhappily, this did not happen, because almost immediately the railroads organized claim departments and trained their claim agents in all the arts and persuasions, so that the railroads would be relieved of the major financial responsibility for their failure to supply safe tools, equipment and work places for our members.

As you perhaps know, each four years the Brotherhood of Railroad Trainmen has a convention—at which time all the various problems of our members are discussed and action taken for the benefit of our members. At each convention following the passage of the Federal Employers'

Liability Act in 1908, there were so many of our members who had lost arms or legs or had otherwise been injured congregating at the convention site to tell their tragic tales of how they had been injured or had been cast aside on the industrial scrap heap, that an investigation of these conditions was ordered by the delegates, and a Legal Aid Department established in May, 1930.

The thought behind "legal aid" is to furnish inexperienced people with the skillful type of assistance which, upon request, will enable them to overcome the many legal pitfalls which face those who have little or no knowledge of their rights under the law.

Accordingly, when the Legal Aid Department was established, it was decided to appoint honest, dependable, and experienced attorneys who could be depended upon to give our members or their dependents a square deal.

In your short period of railroading, you no doubt have heard about our Legal Aid Department; and you possibly have heard about Brother Eugene A. Rerat, who is Legal Counsel in your area, and whose address is: 610 Baker Building, Minneapolis 2, Minnesota. I mention his name because, in addition to his other qualifications, he is a man of good Brotherhood spirit; and I am sure that if you ask him any questions or desire any information to protect your own interests, he will be very happy, without any obligation, to furnish you with the highest type advice possible.

Also, because, whenever any serious accident occurs, the railroads immediately try to cover up the evidence or obtain damaging statements from witnesses or from the injured himself, competent and experienced members of the Brotherhood have been appointed as investigators—one of whom is Brother M. M. Verbon. If you talk with him, you will find that the interest of the Brotherhood in you and your wife is genuine and can be helpful.

[fol. 923] You are a relatively young man. No doubt you have been looking forward to financial success and security for your old age. We all do. Unfortunately, we have in us a sense of loyalty to our employers which, though commendable, often leads us astray. This "built-in" sense of

loyalty inclines us to believe in the people who pay our wages on the assumption that our willingness to do a good job for them will be reciprocated, and that they will deal fairly and squarely with us. However, you and I have been hired by the railroads to make money for them; and when our productivity is ended by injury and we are a financial threat to them, we are dangerous to them and are treated accordingly.

This is a long letter. I have devoted much thought to it. If I were talking to you personally, I could probably tell you more or answer whatever questions you may have. Unfortunately, I am restricted to my office by my duties which require me to be helpful to all our members.

However, if you desire to talk to Brother Rerat or to Brother Verbon, I am sure that they will be able to answer your many questions without any obligation to you. They will help you in your search for security and rehabilitation.

I hope that you and your wife will consider the spirit in which I have written this letter, will talk it over carefully, and will compare what I have said with your local lodge officers who have worked with you and who know that what you have suffered could also happen to them.

I have enclosed a stamped, self-addressed envelope for your reply, and I hope that you will feel free to ask any questions or make any comments.

Wishing you the best of luck, and hoping that you will have adequate security until you are able to adjust yourself to whatever limitations now face you, I am

Fraternally yours,

/s/ C. R. MAHER

C. R. Maher, Chief Clerk
Legal Aid Department

CRM:RJT:rl

enc. 1

cc: Mr. W. G. Shonka, Sec.

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 79

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
ALABAMA

STATE OF ALABAMA)
JEFFERSON COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA
• • • GREETING:

You are hereby commanded to summon SOUTHERN RAILWAY COMPANY, a corporation, to appear before the Circuit Court of said County, to be held at the place of holding the same, within thirty days from service of this process, then and there to answer the complaint of (MRS.) BEATRICE B. BURNETT, who sues in her capacity as Administratrix of the Estate of her deceased husband, BEDFORD T. BURNETT.

WITNESS my hand this 31 day of Dec., 1958.

/s/ JULIAN SWIFT
Clerk

(MRS.) BEATRICE B. BURNETT, who sues in her capacity as
Administratrix of the Estate of her deceased husband,
BEDFORD T. BURNETT,

Plaintiff,

vs.

SOUTHERN RAILWAY COMPANY, a Corporation,
Defendant.

COUNT ONE

The plaintiff (Mrs.) Beatrice B. Burnett, who sues in her capacity as Administratrix of the Estate of her deceased husband Bedford T. Burnett, claims of the defendant the

sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars, as damages, for that heretofore on, to-wit, November 14, 1958 the defendant was a common carrier by railroad and as such was engaged in the business of transporting freight for hire in interstate commerce and plaintiff avers that on said date her said husband was employed by the defendant as a Railroad Trainman and as such he was a member of a train crew of the defendant whose duties required them to move railroad cars with a railroad locomotive over, along and upon a railroad track known as the "Imperial Siding" between Craighead Street and Bridge Street in the City of Danville, Virginia and plaintiff avers that a part of the duties of her said husband as such Railroad Trainman for the defendant was in furtherance of such aforesaid interstate commerce or directly or closely and substantially affected such interstate commerce and plaintiff avers that on said date while her said husband and the other members of the said train crew of the defendant were engaged in and about the movement of railroad cars for the defendant with the railroad locomotive of the defendant along the aforesaid "Imperial Siding" between Craighead Street and Bridge Street in the City of Danville, Virginia and while plaintiff's said husband and the other members of the defendant's said train crew were acting within the line and scope of their employment by the defendant, plaintiff's said husband was caused to be crushed between the side of one of the said moving railroad cars and an obstacle located in such close proximity to the said railroad track along which the said railroad cars were being moved as to make the place dangerous and unsafe for Trainmen of the defendant to perform their work for the defendant in connection with the movement of said railroad cars along the said railroad track and plaintiff avers that the injuries sustained by her husband at the time and place and on the aforesaid occasion resulted in the death of her said husband and plaintiff avers that the said injury and death of her said husband proximately resulted, in whole or in part, from the negligence of the defendant, in that, the defendant [fol. 925] negligently failed to exercise reasonable care to furnish and maintain plaintiff's said husband a reasonably safe place to perform his aforesaid work as a Railroad

Trainman for the defendant and plaintiff avers that this cause of action is based upon and brought under what is generally known as the Federal Employers Liability Act (Title 45, U.S.C.A. Section 51), an act of the Congress of the United States "enacted for the protection and benefit of the dependents of deceased employees of common carriers by railroad engaged in interstate commerce who are killed in line of duty" and plaintiff avers that the action is brought for the use and benefit of herself as the dependent widow of the said Bedford T. Burnett, deceased, and for the use and benefit of Thomas Burnett, dependent minor son of the said Bedford T. Burnett who is 12 years of age, and for the use and benefit of Ronald Burnett, dependent minor son of the said Bedford T. Burnett who is 14 years of age, to recover the pecuniary loss they have sustained and will hereafter sustain as a result of the death of their said husband and father and also to recover the monetary value of special services they would have received from their said husband and father and to recover damages for the conscious pain and suffering of their said husband and father between the time he was injured as aforesaid and the time he died and the plaintiff also claims as additional and special damages for the aforesaid dependent minor children of the said Bedford T. Burnett, deceased, damages for the loss of care, attention, instruction, training, advice and guidance which they would have received from their said father during their minority had he not been killed as aforesaid.

COUNT TWO

The plaintiff (Mrs.) Beatrice B. Burnett, who sues in her capacity as Administratrix of the Estate of her deceased husband Bedford T. Burnett, claims of the defendant the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars, as damages, for that heretofore on, to-wit, November 14, 1958 the defendant was a common carrier by railroad and as such was engaged in the business of transporting freight for hire in interstate commerce and plaintiff avers that on said date her said husband was employed by the defendant as a Railroad Trainman and as such he was

a member of a train crew of the defendant whose duties required them to move railroad cars with a railroad locomotive over, along and upon a railroad track known as the "Imperial Siding" between Craighead Street and Bridge Street in the City of Danville, Virginia and plaintiff avers that a part of the duties of her said husband as such Railroad Trainman for the defendant was in furtherance of such aforesaid interstate commerce or directly or closely and substantially affected such interstate commerce and plaintiff avers that on said date while her said husband and the other members of the said train crew of the defendant were engaged in and about the movement of railroad cars for the defendant with a railroad locomotive of the defendant along the aforesaid "Imperial Siding" between Craighead Street and Bridge Street in the City of Danville, Virginia and while plaintiff's said husband and the other members of the defendant's said train crew were acting within the line and scope of their employment by the defendant, plaintiff's said husband was caused to be crushed between the side of one of the said moving railroad cars and an obstruction located in close proximity to the said railroad track along which the said railroad cars were being moved and plaintiff avers that the injuries sustained by her husband at the time and place and on the aforesaid occasion resulted in the death of plaintiff's said husband and plaintiff avers that the said injury and death of her said husband proximately resulted, in whole or in part, from the negligence of the officers, agents or employees of the defendant while acting within the line and scope of their employment by the defendant or by reason of a defect or insufficiency due to the negligence of the defendant in its cars, engines, appliances, machinery, track, [fol. 926] roadbed, works or other equipment and plaintiff avers that this cause of action is based upon and brought under what is generally known as the Federal Employers Liability Act, (Title 45, U.S.C.A. Section 51), an act of the Congress of the United States enacted for the protection and benefit of dependents of deceased employees of common carriers by railroad engaged in interstate commerce who are killed in line of duty and plaintiff avers that the

action is brought for the use and benefit of herself as the dependent widow of the said Bedford T. Burnett, deceased, and for the use and benefit of Thomas Burnett, dependent minor son of the said Bedford T. Burnett who is 12 years of age, and for the use and benefit of Ronald Burnett, dependent minor son of the said Bedford T. Burnett who is 14 years of age, to recover the pecuniary loss they have sustained and will hereafter sustain as a result of the death of their said husband and father and also to recover the monetary value of special services they would have received from their said husband and father and to recover damages for the conscious pain and suffering of their said husband and father between the time he was injured as aforesaid and the time he died and the plaintiff also claims as additional and special damages for the aforesaid dependent minor children of the said Bedford T. Burnett, deceased, damages for the loss of care, attention, instruction, training, advice and guidance which they would have received from their said father during their minority had he not been killed as aforesaid. .

RIVES, PETERSON, PETTUS & CONWAY
and THOMAS J. LEWIS, JR.

By /s/ AL. G. RIVES
Attorneys for Plaintiff

The plaintiff demands a jury trial.

RIVES, PETERSON, PETTUS & CONWAY
and THOMAS J. LEWIS, JR.

By /s/ AL. G. RIVES
Attorneys for Plaintiff

[fol. 927]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 80

IN THE CIRCUIT COURT
TENTH JUDICIAL CIRCUIT OF ALABAMA

STATE OF ALABAMA)
JEFFERSON COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA—Greeting:

You are hereby commanded to summon Southern Railway Company, a corporation, to appear before Circuit Court, to be held for said County, at the place of holding the same, within thirty days from service of this process, then and there to answer the complaint of Roy P. Shoaf.

WITNESS my hand this 10 day of March, 1961.

/s/ JULIAN SWIFT
Clerk

COMPLAINT.

ROY P. SHOAF,

Plaintiff,

vs.

SOUTHERN RAILWAY COMPANY, a corporation,
Defendant.

COUNT 1.

Plaintiff claims of the defendant the sum of One Hundred Twenty-five Thousand Dollars (\$125,000.00), as damages for that on, to-wit, the 28th day of September, 1959 the defendant was a common carrier of passengers and freight by railroad and was engaged in commerce between some of the states of the United States, including, among others, the State of Virginia, that on, to-wit, said date

plaintiff was employed by the defendant in the capacity of a brakeman for the defendant; and plaintiff avers that on, to-wit, said date while plaintiff was so employed by the defendant in such interstate commerce and while plaintiff was engaged in and about the performance of his duties as such brakeman for the defendant near Blairs, Virginia, in and about such interstate commerce, the railroad car upon which plaintiff was riding struck a piece of earth moving equipment, and as a proximate consequence thereof plaintiff was injured and damaged as follows:

His ankle, leg and foot were fractured, broken, sprained, strained and otherwise injured; the muscles and ligaments of his ankle, leg and foot were pulled, twisted and torn; he was generally bruised about his body and limbs; his nervous system was greatly shocked and impaired, was permanently shocked and impaired; he was caused to suffer [fol. 928] great physical pain and mental anguish; he was caused to lose much time from his customary work and employment and the remuneration therefrom; he was permanently injured and was permanently rendered less able to work and earn a livelihood; and he was put to great trouble, annoyance, inconvenience, great loss of time and great expense in and about an effort to heal and cure his said wounds and injuries.

And plaintiff avers that all of his said injuries and damages were caused as a proximate result of the negligence of the defendant in and about its failure to furnish plaintiff with a reasonably safe place in which to perform the duties of his employment.

COUNT 2.

For this count of his complaint plaintiff adopts all of the words and figures of Count 1, from its beginning down to and including the words "in and about an effort to heal and cure his said wounds and injuries", where said words first appear together in said Count 1, and adds thereto for this count of his complaint the following:

And plaintiff avers that all of his said injuries and damages were caused as a proximate result of the negligence

of the defendant in failing to notify plaintiff and the members of his crew that said railroad track was blocked and fouled by said earth moving equipment prior to the time of the collision complained of above.

COUNT 3.

For this count of his complaint plaintiff adopts all of the words and figures of Count 1, from its beginning down to and including the words "in and about an effort to heal and cure his said wounds and injuries", where said words first appear together in said Count 1, and adds thereto for this count of his complaint the following:

And plaintiff avers that all of his said injuries and damages were caused as a proximate result of the negligence of the defendant in and about causing or allowing said railroad track at the time and place of the collision complained of to be blocked or fouled by said earth moving equipment.

COUNT 4.

For this count of his complaint plaintiff adopts all of the words and figures of Count 1, from its beginning down to and including the words "in and about an effort to heal [fol. 929] and cure his said wounds and injuries", where said words first appear together in said Count 1, and adds thereto for this count of his complaint the following:

And plaintiff avers that all of his said injuries and damages were caused as a proximate result of the negligence of the defendant in causing or allowing workmen who were inexperienced and incompetent in maintenance of way work on railroad tracks to be in charge of said earth moving equipment and to block or foul the railroad track at the time and place of the collision.

COUNT 5.

For this count of his complaint plaintiff adopts all of the words and figures of Count 1, from its beginning down to and including the words "in and about an effort to heal and cure his said wounds and injuries", where said words

first appear together in said Count 1, and adds thereto for this count of his complaint the following:

And plaintiff avers that all of his said injuries and damages were caused as a proximate result of the negligence of the defendant, its officers, agents or employees, acting within the line and scope of their employment as such officers, agents or employees, in notifying the operator of said earth moving equipment that said railroad track would not be in use at the time of the collision complaint of herein.

COUNT 6.

For this count of his complaint plaintiff adopts all of the words and figures of Count 1, from its beginning down to and including the words "in and about an effort to heal and cure his said wounds and injuries", where said words first appear together in said Count 1, and adds thereto for this count of his complaint the following:

And plaintiff avers that all of his said injuries and damages were caused as a proximate result of the negligence of the defendant in failing to furnish plaintiff with a back-up whistle or warning device to warn persons or machinery who might be on or near the track.

COUNT 7.

For this count of his complaint plaintiff adopts all of the words and figures of Count 1, from its beginning down to and including the words "in and about an effort to heal and cure his said wounds and injuries", where said words first appear together in said Count 1, and adds thereto for this count of his complaint the following:

And plaintiff avers that all of his said injuries and damages [fol. 930] were caused as a proximate result of the negligence of the defendant in failing to furnish plaintiff with an adequate and accessible means of applying the brakes on the train on which plaintiff was riding at the time and place of the collision in question.

COUNT 8.

For this count of his complaint plaintiff adopts all of the words and figures of Count 1, from its beginning down to and including the words "in and about an effort to heal and cure his said wounds and injuries", where said words first appear together in said Count 1, and adds thereto for this count of his complaint the following:

And plaintiff avers that all of his said injuries and damages were caused as a proximate result of the negligence of the defendant in so loading said railroad car on which plaintiff was riding as to not allow plaintiff a reasonable opportunity to move about and extricate himself from a position of danger after the collision with said earth moving equipment became imminent.

HIGGINS WINDHAM PERDUE & JOHNSON
LEWIS LEWIS WHALEY & CAGLE
Attorneys for Plaintiff

Plaintiff demands a jury for the trial of this case.

HIGGINS WINDHAM PERDUE & JOHNSON
LEWIS LEWIS WHALEY & CAGLE
Attorneys for Plaintiff

[fol. 931]

CLERK'S CERTIFICATE AS TO ORDER IN CASE

THE STATE OF ALABAMA,
JEFFERSON COUNTY.

CIRCUIT COURT
Tenth Judicial Circuit of Alabama

No. 52617-X

I, the undersigned, as Clerk of said Circuit Court, in and for said State and County, do hereby certify that in the cause of Roy P. Shoaf Plaintiff, vs. Southern Railway Company, a corporation Defendant, the following order was made, to-wit:

1018

June 23, 1961. On motion of the plaintiff, case dismissed without prejudice and costs taxed against plaintiff.

THOMAS E. HUEY, Judge

Witness my hand, this the 2 day of October 1961.

/s/ JULIAN SWIFT
Clerk Circuit Court.

[SEAL]

[fol. 932]

No. 52617-X

THE STATE OF ALABAMA,
JEFFERSON COUNTY.

CIRCUIT COURT

ROY P. SHOAF Rt. 2, Box 43 Salisbury, N. C.

VS.

SOUTHERN RAILWAY COMPANY, a corp. Transportation Bldg.
Birmingham, Alabama.

CLERK'S CERTIFICATE
AS TO ORDER IN CASE

[fol. 933-934]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 81

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
AT RICHMOND

ROY P. SHOAF,

Plaintiff,

vs.

SOUTHERN RAILWAY COMPANY, a Virginia corporation,
Serve process on: THOMAS B. GAY, Esquire, Registered
Agent Electric Building Richmond, Virginia;

and

J. E. SCEARCE R. F. D. 1, Box 57 Westover Hills
Danville, Virginia,

Defendants.

COMPLAINT

Civil Action No. 3313

1. The defendant, Southern Railway Company, a common carrier by railroad in Interstate Commerce, is a corporation organized and existing by virtue of the laws of the State of Virginia with its Registered Agent, Thomas B. Gay, located in the City of Richmond, Virginia. This action arises under the "Federal Employers' Liability Act", 45 U.S.C.A., Section 51 et seq., "Safety Appliance Acts", 45 U.S.C.A., Section 1 et seq., and Orders of the Interstate Commission, promulgated in accordance with the provisions of the said Safety Appliance Acts. Jurisdiction of this Court as to the defendant, Southern Railway Company, is conferred by said Acts.

2. Jurisdiction as to the defendant, J. E. Searce, is founded on diversity of citizenship and amount. The plain-

tiff is a citizen of the State of North Carolina, and the [fol. 935] defendant, J. E. Searce is a citizen of the State of Virginia. The amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars, (\$10,000.00).

3. On or about the 20th day of September, 1939, at approximately 7:00 o'clock A.M., near Blairs, Virginia, the plaintiff sustained personal injury.

4. At the time and place the plaintiff suffered the injuries to his person, the defendant, Southern Railway Company, was a common carrier by railroad engaged in Interstate Commerce and the plaintiff, employed by the defendant, Southern Railway Company, as a brakeman, was engaged in the performance of his duties for the said defendant railroad company in the furtherance of Interstate Commerce.

5. In the performance of his duties as a brakeman, the plaintiff was riding the lead car of work train No. 6220, which car, among other cars, was being shoved by the locomotive toward Motley's Crossing, approximately one-half mile south of Blairs, Virginia.

6. At the same time, a certain crane, owned, operated and controlled by the defendant, J. E. Searce, and being operated by an employee of the said defendant, J. E. Searce, acting within the scope of his employment at the time, was on the railroad tracks at Motley's Crossing, near Blairs, Virginia and the operator of the said crane was using the said crane to perform certain cleaning operations around the said railroad tracks when a collision occurred between the said work train No. 6220 and the said crane, resulting in injuries to the plaintiff.

7. The defendant, Southern Railway Company, its officers, agents and employees negligently failed to provide [fol. 936] the plaintiff with a reasonably safe place to work, safe appliances or adequate or safe equipment; required the plaintiff in the performance of his duties to ride on a car that was defective and dangerous in that the car was not properly equipped with brakes or braking devices which would allow the plaintiff to apply brakes on the work train.

in question and in that it was not properly equipped with a break up whistle or some other type of warning device which would allow the plaintiff to warn persons or operators of machinery who might be on or near the tracks of the approach of the said work train; failed to blow the whistle or sound any warning device to warn the said crane operator of the approach of the said train; failed to apply the brakes on the said work train in time to bring the train to a halt and avoid the collision in question; failed to properly and adequately direct, instruct and supervise the plaintiff and members of his train crew; failed to properly and adequately inspect the track, premises, train, cars, equipment and appliances; failed to warn the plaintiff of the dangerous and/or defective condition of the track, premises, train, cars, equipment and appliances; permitted the train, its cars, equipment and appliances to be maintained and/or operated in a careless and dangerous manner; failed to provide a sufficient number of trained and properly instructed personnel to safely perform the work; failed to observe the "Operating Rules" and "Safety Instructions" promulgated for the efficient and safe operation of the defendant railroad company's trains and safety of its employees; engaged in a dangerous method or practice in the operation of its trains and equipment at or near the site of the crane being operated on the tracks at Motley's Crossing by the defendant; J. E. Searce, and the defendant, Southern Railway Company, its officers, agent [fol. 937] and employees carelessly and negligently conducted themselves with reference to the operation, maintenance and control of the tracks, train, equipment, appurtenances and appliances.

8. The defendant, J. E. Searce, through his agents, servants and/or employees, acting within the scope and course of such agency, service and employment, was careless, reckless and negligent in the operation of its said crane at the time and place of the aforesaid collision.

9. The plaintiff further alleges that each defendant was negligent in failing to cooperate with the other, and/or coordinate their respective activities in and around said railroad crossing so as to prevent, alleviate, remedy, or give notice to the train crew, and the plaintiff in particular,

of the dangerous condition or hazardous situation created by said crane being operated on the tracks at Motley's Crossing, Blairs, Virginia, at the time the said work train was scheduled to arrive at said crossing.

10. The negligence of the defendant, Southern Railway Company, caused the personal injury to the plaintiff; or in the alternative, the negligence of the defendant, J. E. Searce, caused the injury to the plaintiff; or in the alternative, the negligence of both defendants concurrently caused or contributed to cause the injury sustained by the plaintiff.

11. As a result, plaintiff was caused to sustain serious and permanent injuries; has been prevented from transacting his business; has suffered and will continue to suffer great pain of body and mind; has sustained permanent [fol. 938] disability, deformity and loss of earning capacity; and has been caused to incur and will have to incur in the future, large hospital, doctors' and related bills in an effort to be cured of said injuries.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally, in the sum of One Hundred Fifty Thousand Dollars, (\$150,000.00) and costs.

Trial by jury is demanded.

ROY P. SHOAF

By /s/ WILBUR C. ALLEN
Wilbur C. Allen

(Allen, Allen, Allen and Allen)
4020 West Broad Street
Richmond, Virginia,
Attorney for the plaintiff.

Dated: July 12, 1961.

By

T. J. Lewis, Jr.

(Lewis, Lewis, Whaley & Cagle)
905 Healey Building
Atlanta 3, Georgia
Attorney for the plaintiff.

Dated: July 12, 1961.

gld: 7/10/61.

[fol. 939]

IN THE CHANCERY COURT OF THE
CITY OF RICHMOND, VIRGINIA

PLAINTIFF'S EXHIBIT 82

CHANGES IN LEGAL COUNSEL SINCE
OCTOBER, 1949

Parnell Black, Salt Lake City Utah, died September 4, 1951, *Calvin W. Rawlings*, Salt Lake City, Utah, appointed Sept. 10, 1951, having jurisdiction over members on the D. & R. G. Railroad, and Ogden Union Railway and Depot Company, and all cases on the Union Pacific Railroad in Utah and Idaho, where members are not hospitalized in Los Angeles. Later Union Pacific members in Wyoming, Idaho and Colorado were also assigned to him.

Firm of Davis, Yaeger & McGinley & Lush, in Minneapolis, changed to *Davis, Yaeger and Lush* when *McGinley* resigned on July 15, 1951, *Rerat* appointed on July 15, 1951, and firm became *Davis, Rerat, Yaeger & Lush* on that date. That firm dissolved on January 1, 1956, splitting into three parts. The firm of *Lush and Davis* having jurisdiction on the following Lodges: 520, 30, (C. & S.), 32 (MP), 193, 446 (CB&Q and SF), 646, 655, 680 (CB&Q and C&S) 796, 288 (C&S) 660, 763, 19, 20, 46 (CB&Q) 92 (CB&Q and C.G.W) 272, 333, 439 (CB&Q), 528, 690, 732, 928, 945 and 1013 and 29, 101, 111, 134, 135, 170, 190, 360, 400, 487, 493, 598, 604, 642, 853.—The firm of *Eugene A. Rerat* having jurisdiction over the following lodges: 194, 339, 569, 746, 799, 820, 831, 889, 334, 450, 918, 9, 12, 28, 56, 86, 104, 138, 152, 171, 204, 212, 247, 319, 341, 348, 352, 387, 485, 522, 546, 602, 707, 724, 737, 859, 873, 967, 125, 463, 676, 709, 919, 936, 1081, 1104, 61, 673, 714, 791, 809, 213, 295, 328, 405, 457, 580, 597, 614, 670, 777, 811, 814, 834, 886, 917, 1004, 196 (with Hanley), 307 (with Hanley), 403, (Milw. and N.P. ONLY), 572 (with Hanley), 645 (with Hanley), 667 (with Hanley) 667 (with

Hanley), 833, (with Hanley), 864 (with Hanley) 990 (with Hanley) 1015 (with Hanley) 1074 (with Hanley), 559 (with Hanley) 974, except cases arising between Klamath Falls and Beaver Calif, with go to Hildebrand. The Firm of Carl L. Yaeger has jurisdiction over the following lodges: 83, 102, 122, 139, 283, 334, 384, 436, 464, 510, 525, 625, 640, 683, 708, 764 and 804. 128, 151, 176, 177, 191, 210, 282, 303, 357, 410, 428, 445, 516, 607, 609, 657, 888, 942 and 1052. 26, 60, 183, 515, 10, 103, 182, 612, 638 and 1098, 4 (I.C. only) 6, 11, 24, 25, 41, 91, 115, 119, 50, 192 (C.B.&Q., I.C., S.F., R.I. and Milw) 271 (I.C.) 285, 364, 372 (C.B.&Q.) 375, 424, 474 (S.F. only) 479 (C.B.Q., CGW and Soo) 531 (R.I. & Milw.), 563, 617, 700 (I.C.) 788, 830, 874, 877, 900, 931, 940, 965 and 1037.

John H. Haley, Jr. appointed Counsel on January 20, 1954, with jurisdiction over following lodges, 5, 45, 57, 64, 106, 167, 203, 205, 358, 365, 378, 508, 513, 542, 588, 637, 656, 696, 855, 1086 (also 46, except C.B. & Q. members) (also 92, Except C.B.&Q. and C.G.W. members), (also 429, except C.B.&Q. men) *Haley resigned on February 8, 1956*, and his resignation accepted on 2-11-56. Lodges given to Dan McGlynn.

Frank C. Hanley died on October 25, 1956, and the lodges he had sole jurisdiction over were given to Hildebrand, and the lodges that he had which were split between Hanley and Rerat, were given to Rerat.

[fol. 940] *E. B. Henslee, Sr.* died on November 22, 1958, and E. B. Henslee, Jr. and Martin K. Henslee were appointed Counsel, making the firm name *Henslee & Henslee* and they had the same territory formerly assigned to E. B. Henslee.

George S. King was Counsel in Texas, and took *M. M. Davis* and *Wm. States Jacobs* in with him as associates. *Davis and Jacobs were appointed Counsel sometime between August, 1950 and September, 1951* (dates not on cards and not in file), and *Davis went to Dallas* to establish a branch office in July, 1950, leaving *Jacobs and King in Houston. King resigned on September 1, 1951, Schmidt joined Jacobs*, making the firm of *Jacobs and Schmidt* on October 1, 1951. Firm remained split until July 1,

1958, when Davis returned to Houston, making the firm of *Jacobs, Davis & Schmidt* (Schmidt was still not appointed as Counsel, but just in firm name). Firm split on July 1, 1960, *Jacobs and Davis staying together*, and *Schmidt going by himself*. *Jacobs died on July 19, 1960*, and *Davis joined with Shirley Helm Schmidt and Helm were appointed Counsel on September 1, 1960*, and Davis pulled out of Helm's firm middle of October, 1960, and formed his own firm, making three Counsel in Texas, all having equal jurisdiction over all lodges in Texas.

Francis L. McElroy died on September 24, 1958, and W. P. Kennedy appointed *J. Murray Dunn* on September 25, 1958, to have jurisdiction over same lodges McElroy had.

Joseph B. McGlynn died on December 14, 1953, and W.P.K. appointed *Dan McGlynn* on May 1, 1954, to handle remaining lodges that had not been given to Haley when he was appointed the previous January. (Remember, Haley resigned and his lodges were given back to Dan McGlynn on February 8, 1956.)

Thomas C. O'Brien, Boston, Mass., died on November, 1951, and W.P.K. appointed *John S. Stone* on February 1, 1952, to handle lodges formerly in the jurisdiction of O'Brien. *Stone died in 1953*, and the firm of *MacCormack and Feeney in Boston*, were appointed to handle lodges formerly handled by Stone on November 1, 1953. *MacCormack resigned as Counsel and from the firm on September 21, 1958*, leaving only Feeney to handle lodges in the Boston area.

Alex S. Dombey appointed Counsel on September 1, 1960 (Columbus Ohio) with no specific jurisdiction.

Tom J. Lewis, Jr. appointed Counsel on May 15, 1952 to assist his Father, Tom, Sr. in Atlanta Area.

James P. McArdle (Pittsburgh, Pa.) appointed Counsel on March 1, 1960, with jurisdiction over following lodges formerly under Henslee & Henslee 63, 105, 159, 18, 199.

231, 258, 299, 309, 310, 345, 386, 425, 447, 456, 461, 467, 521, 534, 553, 571, 573, 591, 632, 703, 719, 743, 753, 775, 872, 948, 954, 955, 997, 1010, 1018, 1035, 1053, 1092, 1096.

[fol. 941] *Robert E. McGlynn, appointed October 1, 1960, to assist Dan McGlynn in East St. Louis territory.*

Cornelius U. O'Brien, Jr. appointed May 1, 1960, to have jurisdiction over the following lodges, formerly under the jurisdiction of Henslee & Henslee. 42, 43, 117, 153, 160, 174, 257, 338, 383, 444, 476, 488, 498, 511, 541, 574, 694, 787, 989, 1021.

William W. Ramsey appointed May 1, 1952 to assist Father Wallace (Judge) in the Vicksburg, area.

James B. Ramsey appointed sometime around 1956 or '57 to assist his father and brother in the Vicksburg area (no date in file on actual appointment)

Payne H. Ratner, Jr. appointed to assist his father Payne Sr. in the Wichita, Kansas area. Appointment effective January 1, 1957.

Carl L. Yaeger, Jr. appointed December 1, 1956 to assist his father, Carl, Sr. in the Minneapolis area.

William J. Yaeger appointed July 26, 1961 to assist his father and brother in the Minneapolis area.

Zelenko & Elkind appointed December 1, 1958 in the New York area to have jurisdiction over the following lodges, which were formerly under the jurisdiction of McElroy and later J. Murray Dunn, mentioned above. Lodge 2, 7, 40, 73, 87, 162, 197, 202, 253, 254, 353, 491, 517, 527, 552, 560, 598, 623, 678, 706, 731, 750, 754, 755, 765, 807, 823, 829, 846, 848, 867, 885, 946, 949, 959, 961, 963, 983, 1006, 1047, 1054, 1056, 1069, 1090.

Note: On July 16, 1949, A. F. Whitney, then President of the B. of R. T. died and the Board of Directors appointed W. P. Kennedy as President on July 19, 1949. On October 12, 1949, Kennedy cancelled the appointment as Legal Counsel of every Counsel, and on the same date, re-issued their appointment in his name.